



DOMESTIC VIOLENCE LAW IN INDIA

MYTH AND MISOGYNY

Shalu Nigam



DOMESTIC VIOLENCE LAW IN INDIA

This book examines the prevailing legal discourse surrounding domestic violence law in India. It investigates the myths, patriarchal stereotypes, and misconceptions that undermine the process of justice and dilute legal provisions to the detriment of survivors.

The volume:

- Develops arguments based on legal case studies and draws extensively on knowledge from various fields of study, as well as from the experiences of women survivors.
- Examines fallacies within the legal framework through a study of strategic lawsuits against public participation suits within the Indian context.
- Proposes measures for a fair and more gender inclusive legal system that focuses on facilitating access to justice.
- Suggests that emphasis be laid on establishing the rule of law and eliminating the culture of violence.

A key text on gender and law in India, this book will be indispensable to scholars and researchers of socio-legal studies, law, gender, human rights, women's studies, social science, political science, and feminist jurisprudence in South Asia. It will also be of interest to NGOs, activists, and lawyers.

Shalu Nigam is an advocate, researcher, and activist working at the intersection of gender, law, governance, and human rights issues. She has completed her PhD in Social Work and obtained a law degree. She is currently practicing at the courts of Delhi and is associated with the People's Union for Civil Liberties, Delhi, India. She has previously worked with the Indian Social Institute, New Delhi, as well as the Centre for Women's Development Studies, New Delhi. She was awarded a Senior Fellowship by the Indian Council of Social Science Research, New Delhi. Her publications include *The Founding Mothers: 15 Women Architects of the Indian Constitution* (coauthor, 2016) and *Women and Domestic Violence Law in India: A Quest for Justice* (2019). She has been a regular contributor to countercurrents.org and has published essays in journals such as the *South Asia Journal*, *Social Action*, *International Journal of Gender and Women's Studies*, and *Legal News and Views*.



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Myth and Misogyny

Shalu Nigam

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ABBREVIATIONS

AIDS	acquired immune deficiency syndrome
AIDWA	All India Democratic Women's Association
AIR	All India Reporter
BJP	Bharatiya Janata Party
BWS	battered woman syndrome
CAW Cells	Crime Against Women Cells
CEDAW	Convention on the Elimination of Discrimination against Women
COVID-19	coronavirus disease 2019
CrPC	Criminal Procedure Code
CSWI	Committee on the Status of Women in India
DNA test	deoxyribonucleic acid test
FIR	First Information Report
GDP	gross domestic product
GNP	gross national product
HAMA	The Hindu Adoption and Maintenance Act, 1956
HC	High Court
HIV	human immunodeficiency virus
HMA	The Hindu Marriage Act, 1955
HSA	The Hindu Succession Act, 1956
HUF	Hindu Undivided Family
ICRW	International Center for Research on Women
ILO	International Labour Organization
IPC	Indian Penal Code
IPV	intimate partner violence
MHA	Ministry of Home Affairs
MP	Member of Parliament
MRAs	men's rights activists
MWCD	Ministry of Women and Child Development
NALSA	National Legal Services Authority
NCRB	National Crime Record Bureau
NCW	National Commission for Women

ABBREVIATIONS

NFHS	National Family Health Survey
NGO	non-governmental organization
OCD	obsessive-compulsive disorder
PIL	public interest litigation
POCSO Act	The Protection of Children from Sexual Offences Act, 2012
PTSD	post-traumatic stress disorder
PWDVA	Protection of Women from Domestic Violence Act
RSS	Rashtriya Swayamsevak Sangh
SC	Supreme Court
SLAPP	strategic lawsuit against public participation
STD	sexually transmitted disease
UAPA	Unlawful Activities (Prevention) Act, 1967
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNODC	United Nations Office of Drugs and Crime
VAW	violence against women
WHO	World Health Organization

GLOSSARY

- Gauna** Send-off ceremony of a girl who marries at an early age and moves to her husband's house once she attains puberty
- Karvachauth** A festival where women fast and pray for the long life of their husbands
- Khap Panchayats** Caste councils
- Maika** Natal or parental house
- Mangalsutra** The 'holy' or 'auspicious' necklace the groom ties around the neck of the bride at the time of marriage, which identifies her as a married woman
- Nanand** Sister-in-law (husband's sister)
- Pativrata** The wife who is submissive to her husband and his family
- Pindadaan** A Hindu ritual performed to lead the departed soul to salvation
- Saas** Mother-in-law
- Samjhuta** Negotiations or bargain
- Sasural** Matrimonial home
- Shastras** Hindu literature
- Sindoor** Vermilion worn by married women along the part of their hair to indicate their marital status. A widow or an unmarried woman is prohibited to apply the same.
- Stridhan** Gifts given to the bride at the time of marriage



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INTRODUCTION

I myself have never been able to find out precisely what feminism is: I only know that people call me a feminist whenever I express sentiments that differentiate me from a doormat.

(Rebecca West (1913) as quoted
by Faludi Susan, 1991, p. 14)

Dr. BR Ambedkar in his speech on 25 November 1949 after the working of the Constituent Assembly implored that the nation should not remain content with political democracy but must also aim for social democracy. By this, he implied that a union of the trinity—liberty, equality, and fraternity—must be recognized. He forewarned that

it is quite possible for this newborn democracy to retain its form but give place to dictatorship in fact.

From this perspective, the current grim situation demands an introspection when fear is gripping the Indian society if its vast marginalized section is protected and where the status of women is troublesome as projected by the study conducted by the Thomas Reuter Foundation (Dave, 2018). India is also being ranked as a low performer in the world on many of the social indices ranging from the Gender Index to the Hunger Index to curtailing the Democracy Index.

In such a situation, the role of courts becomes important as a protector of the constitution to guarantee the rights of the citizens. As an independent organ of governance, the judiciary is bound to uphold moral conscience, to speak the truth to the political powers, and to provide justice to the citizens against the excesses of executive and legislature. Over the past seven decades, the judiciary has given some valuable decisions in which the courts have stood up valiantly and eloquently for the rights of citizens and their freedoms. From *AK Gopalan v State of Madras* (1950) to *IC Golaknath v State of Punjab* (1967), or *Kesvananda Bharati v State of Kerala* (1973), *Maneka Gandhi v Union of India* (1987), and *Indira Gandhi v Raj Narain*

(1975), these are some of the landmark decisions that have protected the rights of citizens while upholding the basic structure and the spirit of the constitution. The courts in these cases have reiterated the values of liberty, equality, and justice.

At times, the judges have expressed their dissenting views; for example, Justice HR Khanna in his dissenting opinion in *ADM Jabalpur v Shivkant Shukla* (1976) defended the inalienable rights of citizens during the emergency imposed by the then government. This decision is upheld by the nine-judge bench of the Supreme Court in *Justice K Puttuswamy v Union of India* (2017) while overruling the majority's decision in the *ADM Jabalpur's* case. Also, in various other cases, the courts have upheld the principle of gender justice and substantive equality. In *CB Muthamma v Union of India* (1979), Justice Iyer while holding Section 8 (2) and Rule 18 of the Indian Foreign Service Rules as discriminatory stated,

If a married man has a right, a married woman, other things being equal, stands on no worse footing. This misogynist posture is a hangover of masculine culture of manacling the weaker sex forgetting how our struggle for national freedom was also a battle against woman's thralldom. Freedom is invisible, so is justice. That our founding faith enshrined in Article 14 and 16 should have been tragically ignored vis-à-vis half of India's humanity, viz. our women is a sad reflection on the distance between Constitution in the book and law in action.

(para 16)

Similarly, in *Air India v Nargeesh Mirza* (1981), discriminatory service rules have been ruled out. In *Mohd Amin v Shabbano Begum* (1985), the court upheld the secular character of Section 125 of the Criminal Procedure Code (CrPC). In *Vishakha v State of Rajasthan* (1997), the Supreme Court issued the guidelines to prevent harassment of women at the workplace while evoking the international human rights framework. In *Githa Hariharan v Reserve Bank of India* (1999), the Hindu Guardianship Rules are reinterpreted to define the right of a mother as a guardian of a child the 'in absence of father'. The decision in the *National Legal Service Authority v Union of India* (2014) recognized the transgender person as a third gender. In *ABC v State (NCT of Delhi)* (2015), the court has recognized the rights of unwed mothers as the legal guardian of the child without the father's consent. In *Navtej Singh Johar v Union of India* (2018), the apex court has decriminalized homosexuality, while the verdict pronounced in the *Indian Young Lawyers Association v State of Kerala* (2018) allowed entry of women in the age group of 10 to 50 years in the Sabarimala temple. In *Joseph Shine v Union of India* (2019), the Court struck down Section 497 of the Indian Penal Code (IPC) that criminalized adultery. The list goes on.

However, at the same time, the crisis has marred the judiciary. Baxi (1982) in his work *The Crisis of the Indian Legal System* pointed out the basic flaws that existed in the system and noted that

the ILS (Indian legal system) clearly shows ‘the loss of our capacity of imagine, prepare and build for the future’: it symbolizes our incapacity to act.

(p. 3)

Over the years, ‘new pages of ignominy’ have been added and the spate of decisions shows how the courts have disregarded the constitutional morality while upholding a particular ideology (Chhibber, 2019). The unprecedented press conference where the four respected judges appealed to the people to save judicial independence, democracy, and the nation clearly reflects that the crisis is looming in terms of the accountability and the transparency of the judiciary (Gopal, 2018). Questions have also been raised about the credibility of the court when the Supreme Court inquiry into the allegations of sexual harassment against the then-Chief Justice Ranjan Gogoi has given him clean chit without giving a fair opportunity to the complainant to present her case (Katju, 2019).

The partisan approach being adopted by the apex court during the COVID-19 crisis has been raised by several lawyers (Bhushan, 2020) when it is said that ‘judiciary is in the state of coma’ and turmoil, leaving workers and farmers, the poor and the downtrodden to fend for themselves (Dave, 2020). Second, the Supreme Court has also been criticized for prioritizing some cases while postponing other crucial cases relating to protecting the rights of vulnerable sections, and third, it is said that the Supreme Court has surrendered the power of judicial review of the government policies and actions (Thapar, 2020). Allegations have been leveled regarding the abuse of powers and the authority of the courts to exclude those on the margins while issuing the contempt against those who raise their voice (Moitra, 2020). It is stated that when the faith of common people in the higher institutions is dwindling, the expectations from the judiciary is to restore the confidence of the citizenry in the tumultuous times (Hegde, 2019).

Apart from this catastrophe, questions of feminist engagement with the legal reform and law enforcement have remained unanswered despite the years of women’s movement engagement with the state and heavy reliance being placed on law to address the issue of violence against women. Continued impunity with a cavalier attitude toward the human rights of the perpetrators in the courtrooms and police station has resulted in the weakening of hopes placed on the law to reform the ground-level situation. Rather, currently, the patriarchal, fundamentalist, and the majoritarian state has adversely transformed the public institutions and has rapidly dismantled many old platforms (Menon-Sen, 2015). Past advances are being rolled back

such as dismantling the Planning Commission and replacing it with the *Niti Aayog*. The proposals relating to women empowerment are being trimmed down and programs outlay that have direct impact on women such as food security, nutrition, and employment guarantee have been cut as these are deemed as a relic of the old past. The tenets of neo-liberalism have connived with feudal patriarchy to give rise to multiple forms of patriarchies. The concept of gender equality has evaporated rapidly.

The protests against the amendments in the citizenship laws in December 2019 and the farmers' protest that began in 2020 saw a large number of women, young and old, who never crossed the social boundaries, yet the state portrayed many involved in the dissent as the enemy of the state. This is also a crucial time when many of the prominent activists in the Bhima Koregaon case have been jailed and the infamous Unlawful Activities (Prevention) Act, 1976 (UAPA) has been imposed against them while the courts are refusing to grant bail despite the old age or the serious medical conditions (Scroll.in, 2020). Many of the reporters have also been assaulted or are framed under the draconian laws (Jafri, 2020). Activists alleged that the innocent are prosecuted, fake encounters are becoming common, the elected governments are being toppled, questions are being raised against the conduct of police as well as against the judiciary, and concerns are being raised regarding the ways state and society are functioning. (Lalwani, 2020; Sharma and Mathur, 2020; Gupta S., 2020). The incident in Hathras, Uttar Pradesh, where a 19-year-old Dalit girl is brutally gang-raped and assaulted by four upper-caste men, and the way her body was cremated hurriedly at midnight, shows 'how impunity triumph over justice and why injustice prevails' (Chidambaram, 2020). When the cases of violence are at the peak, the state is focused on ending '*love jihad*' (The Indian Express, 2020b). Violence against women is not prioritized, yet at the same time, the women are being infantilized by the state and their agency is negated.

The culture of misogyny

In such a grim situation when the country is grappling with the crisis of governance and questions are being raised about the judicial accountability (Guha, 2020), through this work, I am indicating that from a gender perspective, these 'crisis' situations are rooted in the old practices that have facilitated patriarchy to reign in for more than seven decades despite the constitutional guarantees of equality and justice. Even earlier, misogyny has expressed itself in multiple forms as privileges; discrimination; sexual assaults; belittling of women; commodification and objectification of women; and denial of basic rights to women, including suppression of their right to survive, and their right to life. Victims of violence are being blamed and stigmatized by society while the media is declaring them guilty for the

crimes being conducted by the perpetrators. The state or society has hardly made efforts to rescue the victims of violence.

Rather, more specifically in the cases of domestic violence, society has been discrediting women as incapable of handling relationships. Single women are frequently alienated and isolated and any deviation of family arrangement apart from the heterosexual family norm is otherized, while the men continued abandoning women and children. Widows are being out-casted, and those who assert themselves are being branded as witches. For ages, the misogynist society could not tolerate a woman who can assert her independence or question the stereotypical notions. This culture of violence thriving for decades, yet the society hardly is paying attention. Perhaps, its victims are women. Perhaps, the space where the crime is being committed is considered a private space, hidden from the public scrutiny.

While making a presentation at the Beijing Conference held in 1995, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has drawn an inextricable interlink between the violence against women and violence at war. It is stated:

To combat war as the ultimate expression of the culture of violence, we must address issues such as violence against women in homes, acts and reflexes of aggression and intolerance in everyday life, the banalization of violence in media, the implicit glorification of war in the teaching of history, trafficking in arms and drugs, recourse to terrorism and denial of fundamental human rights and democratic freedoms.

While concluding this statement, it has been further reiterated:

Only together, women and men in parity and partnership, can we overcome obstacles and inertia, silence and frustration and ensure the insight, political will, creative thinking and concrete actions needed for a global transition from the culture of violence to a culture of peace.

(Hilkka, 1997)

The crux of this argument is that the culture of violence can be transformed to achieve a culture of peace by addressing the basic issues relating to the banalization of violence in the everyday life.

Similarly, Wilhelm Reich (1933) in his book titled the *Mass Psychology of Fascism* writes,

From the standpoint of social development, the family cannot be considered the basis of authoritarian state, only as one of the most important institutions which supports it. It is, however, its central

reactionary germ cell, the most important place of reproduction of the reactionary and conservative individual. Being itself caused by the authoritarian system, the family becomes the most important institution for its conservation.

(p. 55)

Hence, family is considered a significant institution that can provide the basis for an authoritarian state to reproduce and strengthen itself.

However, this linkage between violence in homes and the one that is happening at the societal level is being neglected in the Indian society. Domestic violence theoretically has been criminalized, yet it is being treated as a lesser crime and has fueled the culture of violence with impunity. Through this work, I am drawing the connection between the adjudication of domestic violence cases and the reluctance of the state to hold the batterers accountable. I argue that the state needs to end the culture of the backlash. To foster justice, it is essential to eliminate the myths and the misogyny.

For years, gender insensitivity is being reflected in the spate of decisions by the courts in cases relating to violence against women as well as those related to women's rights in marriage, divorce, and related matters. For instance, in *Tukaram vs State of Maharashtra* (1979), famously known as *Mathura's rape case*, an open letter was written by four eminent personalities while challenging the verdict pronounced by the Supreme Court then. Also, Bhanwari Devi, a *Saathin* employed as part of the Women's Development Program, was gang-raped in 1992 by the upper caste men in Bhatari, Rajasthan, after which the *Vishakha's guidelines* were formulated; yet she is still waiting for justice while several of the accused have died (Mathur, 1992). The protests against the district court's verdict have not led to the punishment of the guilty (Vij, 2007). Rameeza Bee, a rape victim, was accused of being sexually promiscuous (Prasad, 1978), while Maya Tyagi was re-victimized as accused of being a dacoit (Das Gupta, 1995). Most of these victims were from socially and economically disadvantaged groups. The list is long.

The growing sexism and misogyny over the decades have resulted in a situation in which the law and procedures are twisted while the crime against women increased manifold. The rule of law has deteriorated over the years. In the Hindu *Rashtra*, women who raised their voices are being trolled, raped, maimed, and killed while the accused are being hailed and garlanded. The '*Beti Bachao Beti Padhao*' scheme could not prevent violence that increased in multiple forms. Today the situation is that the cows have been assured more protection than women as the *Rashtriya Swayamsevak Sangh's* (RSS's) mouthpiece '*Saamana*' alleged that 'cows are safer than women in India' (Raghunatha, 2018).

More specifically, in cases relating to domestic violence, justice seems to be invisible. The power structure seemingly supports the culture of violence

with impunity as evident from the decisions being pronounced over the years. Domestic violence is being treated as a lesser crime by the state machinery (Nigam, 2017). Specifically, from the feminist point of view, several critical questions have emerged that requires rethinking.

The feminist jurisprudence approaches elsewhere have explained the fact that law has not only played a significant role in upholding the subordinated status of women (Fineman, 2015), but it also perpetuates male dominance while silencing women (MacKinnon, 2005). Considering this approach and the socio-legal context, this work examines the assumption that the law is fueling sexist ideology and is perpetuating injustice through furthering ill-informed opinions rather than applying the rule of law or the principle of justice. It specifically draws attention to the fact that complainants of violence need to be taken seriously. It interrogates the phenomenon of backlash in which the culture of myths and misogyny is being promoted and the progress made is being curtailed and pushed back by forces that are trying to promote an unequal world guided by the male hegemony and supremacy.

The backlash is not new

History reveals that any attempt toward granting equal rights to women has met with stiff resistance from society. Family laws or the laws relating to the rights of women and children are slowest to change. During colonial times, the British rulers deployed the traditional lens to adjudicate the cases relating to abuse within families (Sarkar T., 2001). From 1941 to 1956, the discourse on the controversial Hindu Code Bill provides evidence of how the women's rights were compromised in the domain of the family. The rhetoric of noninterference in the inequitable personal laws has led to women's subjugation despite the fact of the promise of equality being etched in the Constitution.

In 1974, the government appointed the Committee on the Status of Women in India (CSWI, 1974) to look into the 'question of women'. The report 'Towards Equality' that came out in 1974–75 observed that over the years, the condition of women has worsened, and the gender disparity has widened. The report attributed that the traditional sociocultural factors hindered women's access to constitutional rights and put forth several recommendations including reforming the laws. During the next decade, the issue of violence against women occupied national focus as many cases relating to custodial rape, sexual violence, and 'stove burst' caught attention. The deaths of married women through fire in the kitchen have been seen as bride-burning cases and associated with the nonpayment of coercive dowry demands from natal to the conjugal families. These issues led to mobilization around the issue of violence and several women-centric laws came into existence. By the 1990s, a large number of women became increasingly visible in a variety of institutional contexts—in the state-sponsored women's

development programs, in politics through quotas, and in women's studies programs (Tharu and Niranjana, 1994; Gandhi and Shah, 1992).

The situation also changed with the introduction of the policies of liberalization, privatization, and globalization during the 1990s that pushed women into the low-paying jobs leading to 'feminization of poverty'; at the same time, these policies also ushered in the free-market approach that created an image of 'woman of substance'. Burte (2008), while linking the adverse effects of the consumerism with that of domestic violence explained,

The majority of women today face survival issues like shelter, sanitation, water, minimum wages and poor health facilities. Often, they turn to 'family' for help, they encounter domestic violence. Thus, women find themselves between the devil and the deep sea. In low paid jobs and with no social security, they do not have means to effectively negotiate non-violence in the family. Women's exploitation in era of consumerism is twofold: in the outside world, they are marginalized, and on the domestic front, they have little or no power. The ethos of consumerism creates the impression of vast array of products available to everyone, whereas majority of women are left with shrinking purchasing power. This situation of women's own participation in both consumerism and communalism projects have added to the violence against women.

(p. 16)

Instead of opposing the free-market approach that commodified and objectified women, the fundamentalist forces propagated communalism that further marginalized women. The *Sangh Parivar* has fueled the divide in the society based on religious identities and has propagated the message that 'women's place is in the family'. This divisive approach has attempted to shatter the sense of the universal sisterhood. The controversy generated after *Shahbano's* case in 1985, and *Roop Kanawar Sati's case* in 1987 has prioritized community rights over women's rights. The backlash became further evident when after Bhanwari Devi's rape in 1992, several political parties mobilized women against Bhanwari and felicitated the rapists in the flagrant support of community rights. Also, the women supporting this ideology participated in violence unleashed during 1992–93 in post-Babri incident as well as in 2002 Gujarat riots (Burte, 2008, pp. 14–17). This pattern is again being repeated during the recent years.

Moreover, the introduction of Structural Adjustment Programs at the behest of organizations such as International Monetary Funds and the World Bank has shifted the socioeconomic development approach and led to the 'NGO-ization' of the development sector. The donor agencies preferred non-governmental organizations (NGOs) as these are accountable to foreign donors and not to the communities. NGOs lack the political

commitment to bring about major social transformations or to challenge the systemic structural subordination of women. All these instances led to increasing vulnerabilities of women through greater surveillance, monitoring, and control of women's lives, and through the process of co-option (Gangoli, 2007; Sunder Rajan, 2003). The introduction of NGOs changed the politics while diluting the autonomy of the women's movement as the NGOs are apolitical and gave rise to the culture of gender professionals rather than feminist activists. The professionals provide project-based technical solutions rather than address the broader socioeconomic context that structure power relations (Madhok and Rai, 2012).

Today, women are being compelled to face the worse despite the framework of laws and policies that exists to protect them. In fact, the boomerang is causing harm in multiple ways. With the emergence of right-wing authoritarianism along with the neoliberalism, the women, more specifically, the poorest of poor are facing the worse (Nigam, 2020c). With scant available resources, dwindling community support, and with no options available outside the mesh of family, the women facing violence in homes are subjected to adverse situations. Besides, when the magnitude and severity of violence are increasing, at the same time, the state is diluting the available legal protections. The dowry abuse has not lessened; rather the coercive dowry demands are expanding along with intense commercialization and increasing fundamentalism. The laws have failed to keep pace with the changing socioeconomic circumstances.

Also, as the Indian citizens are traveling abroad, they carry the baggage of patriarchy with them. This is evident from the fact that in Australia, the Senate has appointed a committee on 26 June 2018 to look into the practice of dowry and the incidences of dowry abuse in Australia. This committee conducted a detailed inquiry and made several recommendations in its 'Senate report' in February 2019. Some of its laudable recommendations are broadening the definition of 'economic abuse' as defined under the Family Law Act 1975 as well as in the Migration Regulations 1994, making provisions to protect the rights of victims of dowry abuse, creating a temporary visa for 'Woman at Risk in Australia', including 'safety pack' in the visa applications, and strengthening the law to capture the data on dowry violence incidences, among others. As per recommendations, the visa rules are amended in March 2019. Accordingly, Australia is refusing to issue a visa to a person with the domestic violence conviction (SBS, 2019). However, this report, while relying on the submissions made by several groups and while following the Indian experience, has reiterated the patriarchal norms rather than applying the framework of the women's human rights as enshrined in the international instruments.¹ Increase in incidences of dowry-related violence and domestic abuse are also being reported from other countries too where Indians have migrated (Sundari et al., 2018; Patel et al., 2016).

Violence against women and misogyny are rising proportionately in India

In 2013, the WHO reported that nearly 35 percent of women worldwide face violence by partners in some regions. Another report released by the UN pointed out that around one-third of women worldwide have experienced physical and/or sexual violence by intimate partners at some point in their lives (UN Statistics Division, 2015). In India, a study by the International Center for Research on Women (ICRW) (2000) showed that half of the women in a sample of 10,000 across seven cities stated that they had faced violence, while 66 percent remain silent about mistreatment. Higher socioeconomic status could not protect against sexual violence (Koenig et al., 2006).

The report by the National Crime Record Bureau (NCRB, 2019) in India shows that 1,25,928, cases have been registered under Section 498A. Also, in the same year, 7,115 cases have been registered under Section 304B, IPC, a law that deals with dowry deaths, while 13,297 cases have been reported under the Dowry Prohibition Act. The conviction rate is 9.5 percent in cases pertaining to Section 498A in 2016, which rose to 13 percent in 2018 and 14.6 percent in 2019. It is 39.1 percent in cases of dowry deaths in 2016 and 39.6 percent in 2018, reduced to 35.6 percent in 2019.

Table 0.1 reveals that the crime against women within the private spaces of the home is increasing over the years. For instance, the incidences recorded under the Dowry Prohibition Act doubled: 4,504 in 2006, which increased to 9,683 in 2016; in 2019, 13,297 cases have been reported. The irony is that every year, a large number of women are reporting the crimes, yet the state is adamantly and consistently pursuing the agenda of diluting the laws.

The tragic fact is that these are reported cases and show only the tip of the iceberg. Many cases are not being reported or are not being registered for various reasons. Statistics indicate that the culture of violence predominates. In a country where deities are being worshipped as Goddesses, on one hand, it is a situation of complete embarrassment, that on the other hand, the safety in homes is compromised. The notions of ‘protection’ in marriage and ‘security’ in homes seem to be fictitious.

Domestic violence cases increased during the lockdown

Moreover, during the mandatory lockdown being imposed in the wake of COVID-19 world over, various social problems such as stigma, discrimination, and violence magnified. During the mandatory isolation, the home has lent a sense of security and comfort to some, yet at the same time, it has also become a place where many women faced increasing violence, discrimination, and burdens of various kinds. In the absence of checks and balances amidst lockdown, women and girls trapped in violent homes with

Table 0.1 Number of domestic violence cases reported all over India²

<i>Year/ (number of incidences)</i>	<i>498A, IPC</i>	<i>Dowry deaths, Section 304 B, IPC</i>	<i>Dowry Prohibition Act</i>	<i>PWDVA</i>	<i>Abetment to suicide</i>
2006	63,128	7,618	4,504	–	–
Conviction rate	21.9%				
2007	75,930	8,093	5,623	–	–
Conviction rate	20.9%				
2008	81,344	8,172	5,555	–	–
Conviction rate	22.4%				
2009	89,546	8,383	5,650	–	–
Conviction rate	19.8%				
2010	94,041	8,391	5,182	–	–
Conviction rate	19.1%				
2011	99,135	8,618	6,619	–	–
Conviction rate	20.2%				
2012	1,06,527	8,233	9,038	–	–
Conviction rate	15%				
2013	1,18,866	8,083	10,709	–	–
Conviction rate	16%				
2014	1,22,877	8,455	10,050	426	3,734
Conviction rate	13.7%				
2015	1,13,403	7,634	9,894	461	4,060
Conviction rate	14.2%				
2016	1,10,378	7,621	9,683	437	4,485
Conviction rate	9.5%	39.1			
2017	1,04,551	7,466	10,189	616	8,129
Conviction rate	15.9%	41.1			
2018	1,03,272	7,166	12,826	579	8,324
Conviction rate	13%	39.6			
2019	1,25,298	7,115	13,297	553	8,315
Conviction rate	14.6%	35.6	21.5	21.9	15.8

abusive men faced severe abuse. At the global level, the UN chief Antonio Guterres called for a global ‘ceasefire’ because of the horrific global surge of violence directed toward women (UN News, 2020). The UN Women (2020) termed this as ‘shadow pandemic’. It is estimated that millions of cases of violence, child marriage, female genital mutilation, and unintended pregnancies occurred during the crisis (UNFPA, 2020). Several countries took initiatives to support the victims of violence (Nigam, 2020a).

In India, the National Commission for Women (NCW) has reported a rise of 94 percent in complaint cases in which women have been abused in their homes during the lockdown (The Economic Times, 2020b). The childline has received twice the number of calls it received otherwise (Tyagi, 2020). Several cases of young girls being raped have been reported during the pandemic. In Madhya Pradesh, a young girl at home was raped by her father

twice while her mother stuffed cloth in her mouth (Mirrornownews.com, 2020a). In Telangana, a 35-year-old man raped her 13-year-old-daughter multiple times (Mirrornownews.com, 2020b). In Tamil Nadu, a man repeatedly raped her teenage daughter and impregnated her (Lobo, 2020). The ‘mask’ could neither conceal the barbaric violence taking place in the privacy of homes nor could brutal patriarchy be quarantined. COVID-19 has exposed the fact that a home may ensure safety from coronavirus but not from the abusers.

Also, as soon as the lockdown was imposed in India in March 2020, migrant men and women who walked hundreds of miles without food or water to reach back home suffered worst. No arrangements were made by the state to provide services to those women who delivered their babies on the roadside. Women living in slums faced worse in terms of survival not only because of lack of resources but also because they have been compelled to live an endangered life facing disease, poverty, and death (Slater et al., 2020). Local relief packages consisting of food and other supplies could not include sanitary pads, making ration patriarchal and designed for the needs of men and not for women (Bhalerao, 2020).

When several NGOs petitioned the courts, some high courts issued directions to the state to provide protection to women and children. For instance, the Delhi HC, on a petition filed by an NGO, in the matter of *All India Council of Human Rights Liberties and Social Justice v Union of India* (2020) directed the government to deliberate on measures to ensure effective implementation of the Protection of Women from Domestic Violence Act (PWDVA) in the wake of an increase in the number of cases. The Jammu and Kashmir HC took *suo moto* cognizance and on 18 April 2020, offered slew directions that include the creation of special funds and designating informal spaces for women such as grocery stores and pharmacies where women could report abuse without alerting the perpetrator. The Karnataka HC directed the state government to take the suitable actions. The data submitted before the Madras HC by the state government claimed that 616 complaints have been received between 25 March and 14 May (Gladwin, 2020). Also, the Allahabad HC in *Ala Hazrat Helping Society v State of UP* (2020) has issued an order directing the state government to furnish the status report about the steps taken to attend to the grievances of victims.

However, neither the Supreme Court nor the executive arm of the state has shown empathy toward the victims of domestic violence (Nigam, 2020b). Rather, the government eased down the restrictions by opening the liquor shops despite knowing the interlinkages between the consumption of alcohol and an increase in violence against women. Although the data show an increase in incidences along with a surge in the severity of assaults (Chandra, 2020), the Union Minister had debunked the claim that violence increased during the lockdown as ‘scaremongering done by NGOs’. (Deccan Herald, 2020). Amidst the calamity of increasing cases of violence, on one hand,

and the dwindling support services, on the other hand, the state ends up denying violence. The government claimed that it has held online awareness sessions with the Anganwadi workers (Outlook, 2020a); however, many of the health workers themselves expressed distress over their working conditions as they lack minimal protection and face frequent abuses (Rao and Tiwari, 2020). Further, the activists claimed that the guidance note issued by the Ministry of Women and Child Development (MWCD) lacked clarity in terms of the role of state-run services with no protocols being laid down on how to respond to the survivors (Bhate-Deosthali, 2020). In fact, the state is consistently denying and neglecting the domestic violence issue over the years. Though the laws are being made to deter crime, at the ground level, the implementation of law remained problematic.

Practical aspects of the domestic violence laws

Section 498A has been introduced in 1983 by the Criminal Law (Second) Amendment Act in the IPC. It recognizes cruelty against a married woman by her husband and in-laws as a crime and lays down the punishment of imprisonment that may extend up to three years and/or fine. Seen as a significant legal provision introduced after extensive pressure from women activists and lawyers during the 1980s, the law criminalized violence within homes to assist married women in raising their voice against such abuse. It puts the onus on the state to remedy the situation of women facing torture in the 'sacred' private familial domain. Similarly, the PWDVA, 2005 is introduced to provide civil remedies to the battered women. This law is a result of the years of activism by the women's movement because the criminal provision is insufficient to address the range of issues women face.

When filing a complaint under Section 498A or seeking a protection order or any other relief under the PWDVA, a woman seeks justice, an order to stop abuse, or a life free from violence. Access to justice is not an option easily available to her. Women who approach the police station are being made to run around from pillar to post to register their complaints. Those working with the victims use the law as a strategic and pragmatic tool to bring the husband to the negotiating table to arrive at a *samjhauta* (compromise). The Crime Against Women Cells (CAW Cells), police stations, protection officers, and service providers all exist to facilitate the legal process, yet various studies have shown that complainants hardly receive justice. The law follows a standard operating procedure mandating that a complainant should undergo counseling. Most of the counseling is hardly related to emotional healing or the psychological recovery from the scars of violence; rather, the process is used as a pressurizing technique to explain to the complainant that there are no options outside the marriage and therefore, for 'the sake of her kids' she should put up with her abusive situation. In case she remains adamant, she is being told that she should 'settle the case', which implies

filing the application for mutual divorce and agreeing to ‘move on’. If a woman disagrees with any of these options, the case continues in the court where her husband may file counter-applications such as those relating to restitution of conjugal rights, divorce, visitation, or custody, or the parents-in-law file the lawsuit for eviction in case the woman chose to exercise her right to residence as provided under the PWDVA. And if she still persists, the matter continues in the court for years in which the court construes her as a ‘gold digger’, ‘liar’, ‘family breaker’, and so on. Complainants are not seen as survivors who have faced oppression; rather, different reasoning and procedures are applied while adjudicating such cases. The system legitimizes the patriarchal norms rather than the legal or the humane approach. What is offered in the process is the backlash, where women end up being dispossessed, shattered, and re-victimized. Instead of making a dent in the patriarchal social order, the laws are being used to reiterate existing myths, biases, and stereotypes. The situation today is that domestic violence is treated as a ‘social crime’ when compared with violence by strangers, even though it is much more severe in nature.

In fact, the Supreme Court in *Arnesh Kumar v State of Bihar* in 2014 has made the sweeping statement that Section 498A is being ‘misused and abused by the disgruntled women’ and directed to dilute the provisions relating to arrest and bail of the accused persons. In several other cases, similar arguments have been raised. Serious complaints of violence are being normalized while dubbing these as ordinary ‘disputes’ or ‘ego tussles’. Batterers are not held accountable for their unlawful actions. Instead of punishing the guilty, the system is being manipulated to arrive at a ‘settlement’ with the victim. One of the fallouts of such an action is a lower conviction rate. The courts thus serve to restore the patriarchal order instead of upholding the constitutional values.

Myths and stereotypes operate in the courtrooms to deny justice to women. For instance, in *Rajesh Sharma v State of UP* (2017), the Supreme Court passed a directive to police that no automatic arrests be made without ascertaining the veracity of the complaints lodged under Section 498A. The trial lacks the essential element of legality as the court suggested the formulation of ‘Family Welfare Committees’ to scrutinize the complaints to ensure that no ‘false case’ is registered. Without examining the ground realities, the court concluded that the law is misused by ‘vengeful’ women. The bench, while sympathizing with men, remarked that there was a ‘violation of human rights of innocents’. No iota of compassion is shown toward women who are being abused, abandoned, burned, murdered, and brutalized in homes. After the protest by several women’s organizations and petitions filed in the Supreme Court, in the matter of *Social Action Forum for Manav Adhikar v Union of India* (2018), another bench ordered the formation of committees be done away with while retaining the provision relating to no arrest and bail for the accused persons.

Such verdicts indicate how the principles of justice are routinely being undermined.

On 17 July 2020, in *Jairaj v State of Maharashtra*, the Supreme Court quashed the First Information Report (FIR) registered under sections 498A, 506, 323, and 406 read with section 34 of the IPC on the grounds that

since the husband and wife have amicably settled the matter, considering the fact that the appellant is the distant relative of the husband and wife, FIR No. 26 of 2015 in Regular criminal case No. 653 of 2015 is hereby quashed qua the appellant—Jairaj.

The court upheld the view that crime in the marital life is not serious enough; therefore, the parties may settle the matter outside the court and the FIR can be quashed on this sole ground. The judiciary while pronouncing its verdicts sets precedents not only for the particular case in hand but also such articulations have a significant impact for the future. While dismissing the women's claims, trivializing their concerns, and not fixing the accountability of the batterers, a culture of violence and impunity is being encouraged.

The language used in courts revolve around the terms such as 'disgruntled women', 'vengeance', and so on, ignoring the fact that for the complainant, who is a victim, the priority is not demanding equality, but simply seeking a violence-free life; she is claiming her right to life with dignity. The courts do not see complainants as citizens imbued with rights. The state promotes the normative ideal of conjugality and in the process, ends up reinforcing gender injustice. The law is twisted in a way that it hardly offers any solution in terms of relief, rehabilitation, compensation, or restoration. What is actually practiced is compromising the safety of women and children in the guise of lending dubious economic security. The situation, therefore, is that violence is increasing and so is injustice.

More specifically, within the courtrooms, attempts are being made on an everyday basis to shut the voices of women who dare to complain. In the courts that are male bastions, while adjudicating cases of violence, male privileges operate to protect male supremacy and preserve male entitlements. A woman who is challenging the patriarchy is portrayed as one who is wrong or a 'bad woman' who is abusing the process of law because a 'good woman' is passive, compliant, and non-complaining. The laws punish women who transgress the boundaries defined by the patriarchal norms and threaten the privileges dominant men enjoy. Despite the increase in the magnitude of domestic violence, the law is implemented in a way to provide no redress to the sufferings of women. Allegations are wrongly being made to dilute the legal provisions as these are seen as disastrous tools used by women to trap husbands, rather than as a law to secure domestic order or to provide freedom from violence. In fact, some of the proponents have gone a step further to argue that the women who file false cases should be

prosecuted or penalized. A well-organized, resourceful group of men has launched a continuous attack on this law over the years while glorifying the family and downplaying violence within it. Repeated, boisterous noises are being made that the law is slaying the institution of marriage. Utilizing the cyber forums and media, the narrative of women destroying the family through alleged misuse of law is disseminated. The ferocious lobbying by the men's rights activists (MRAs) is impeding the process of justice whereby the state actors are also blindly repeating the facts without examining the available data. This malicious propaganda against women-friendly law has boomeranged and the cases of violence are not being registered easily today (Singh, 2006). The police and the courts mirror the patriarchal values that exist in the society instead of implementing the constitutional norms or making transformation through creating the legal culture that fosters the goals of justice. The hostility by the state is highly evident in the fact that it distorts the reality to jeopardize the ongoing advocacy efforts made at various levels. The rise of backlash is working toward the dilution of vital protections for women and needs to be looked into. It is, therefore, critical to examine the understudied dimension of the backlash from the gender perspective.

The backlash at the global level

The UN human rights chief Michelle Bachelet (2020), while noting that women's rights are not optional, expressed that

women's rights agenda must not be torn apart by the establishment of a hierarchy between what is acceptable and what is deemed 'too sensitive'.

Women's access to social services, security, and social protection is crucial to elevate the status of women and reduce their sufferings while challenging existing gender roles, reducing unpaid labor, and lessening women's dependence on men through offering alternatives. Such social infrastructure is essential to achieve the objects of the UN's Sustainable Development Goals.

However, rather than formulating the policies and programs to empower women, the backlash against the women-friendly laws is rising at the global level. The cultural war seems to be built around the issue where the conservative groups aligned in defense of so-called 'natural family' built on the nucleus of a heterosexual married couple. This is when the world over diverse family forms composed of single-parent families, same-sex partners, blended families with married or cohabiting partners with children of previous unions, siblings-based household, and other forms of living arrangements are growing. Irani and Goetz (2019) noted that on the one hand when families are becoming diverse because of increasing women's empowerment,

at the same time, the ultra-conservationist forces are clubbing together to erode the protections. They are organizing events such as ‘It takes a Family’ to mark International Day of Families where not only states such as Egypt, Russia, Qatar, Belarus, and Bangladesh with their overtly authoritarian and religious agenda are participating, but also the US joined to defend the patriarchal families. This orthodox agenda is being promoted while overlooking the major findings of the UN Women (2019) Report on ‘Families in the Changing World’ of 2019–20 that highlights that the quality of life and relationship can exist apart from the rigid patriarchal structures and that strengthening the social protection measures such as education, agency, and empowerment to exercise rights can create a sustainable environment while enhancing equality, nondiscrimination, and the violence-free life.

Attempts are being made to curtail the progress being made in terms of women’s rights, when the conservative ideology promoted by the religious groups, business, and other forces while sabotaging the rights language are propagating the idea of the stereotypical family while undermining the violence that takes place beneath the veils of privacy. While overlooking the gendered notions, the biological differences between sexes are exploited by the conservative forces to deny equality within the public and private realm (Eisenstein, 1988). The market forces aligned against the welfare principles, because the neoliberal economic framework sees social protection as a private arrangement and pressurizes an individual to buy insurance, arrange for child care, or to save for the future, or targeted the safety programs such as cash transfers to mothers for keeping children in schools while reinforcing gender roles (Goetz, 2019). In fragile democracies, the backlash against women’s interest raised new challenges where such reversal actions of gender-equal policies lead to the dismantling of hard-earned rights.

This profound turbulence at the global level is resulting in democratic decay, increasing inequalities, environmental degradation, rising populism, and the backlash against women’s progress. It is embedded in the social fabric and has been emerging forcefully in everyday lives in public and private spaces. Yet at the same time, there are some innovative steps being taken in countries such as New Zealand, which has announced the ‘Well-Being Budget’ rather than measure economic growth in terms of financial metrics such as gross domestic product (GDP). This budget, while moving ahead of the concept of living standards, focuses on bolstering mental health, reducing poverty, supporting the indigenous population, focusing on eliminating violence, shrinking inequalities, and developing a low-carbon emission economy (Samuel, 2019). Earlier, Bhutan coined the term ‘gross national happiness’. This people-centric approach with a focus on the happiness of citizens suggests that the state is responsible for not only economic success but also needs to consider the qualitative life of its collective citizenry (Cuming, 2019).

However, considering the prevailing situation, it is essential to confront the culture of misogyny by shattering the myths with facts, reasoning, logic, statistics, and the available data to create a just and equal society. Contestation at every site is significant to counter the culture of violence and impunity, privileges, tyranny, and autocracy beginning from the home to the outside world at each and every step. This work attempts to address difficult questions that are thrown up in fields by the women litigants on one hand and the courts on the other hand in the Indian context.

Framing the concerns

Freedom from violence is key to the development and progress of any civilization. In case of crimes committed by strangers, or by neighbors, or in any other given situation, a victim is entitled to seek justice as per the standard law. However, in the case of domestic violence, the different parameters of laws are being invoked. Considering the previous discussion, this work examines these questions: Why is the state working in a denial mode when cases of domestic abuse are increasing? Why is wife beating considered a lesser crime by the state and society? Why is the perpetrator of the crime not held accountable for his unlawful actions? Why are different parameters of justice utilized when a woman is abused within private spaces? Why has the legal system failed to deliver justice to battered women? How effective is the strategy adopted by the women's movement whereby a heavy emphasis is placed on legal reforms to achieve the goal of gender justice? Why has the state failed to see women as autonomous citizens outside the construct of family or kinship? Why are those who advocate for the dilution of the law not raising the issues relating to the provision of shelter homes or material and economic support for women? If the family provides protection, why are so many women approaching the courts to file complaints against their violent husbands? Why has the state failed to act against predators who guise themselves as protectors within the private spaces? Does domestic violence law deal with a 'men versus women' issue or does it address the patriarchal realities relating to oppression of women within homes? Why are the unrepentant abusers excused by the state while the victims are being blamed and victimized by the legal system?

Beyond the pro-women or anti-men binary, this work seeks to highlight the ways in which patriarchy operates to subjugate women. This work is about the role of the state and how the state, supposedly as a guarantor of rights, is instead endorsing backlash and abridging the rights it is supposed to protect. It indicates how the power operates in the courtrooms and reproduces social inequalities between men and women while reinforcing the gender hierarchy. The state has failed to realize that it is violence within the family that is causing the problems, so eliminating the abuse itself is necessary. This work is a step toward maintaining a statement of balance sheet

of women's rights from a gender perspective and the violation of women's claims when they knock on the doors of the courts. It suggests that women's rights are not optional or can be changed at the altar of political inclinations or ideologies. It argues that it is necessary to help rehabilitate the battered women in a secure environment.

Why this book?

The idea of writing this book has evolved from my own quest of justice and my encounter with the stubborn patriarchy in my immediate environment. As a professional lawyer and a researcher, when I listened to the saga of pain, sufferings, agency, courage, and struggles of women I met in the court premises, and while examining the judicial discourse that appeared in the spate of judgments, I observed that a huge difference exists in the way the laws are being written and the rights are guaranteed on papers and the way these are being implemented, linking theory to the praxis. Working with the survivors has helped me gain insight into their everyday realities. Therefore, I began the quest of justice while connecting these with the lived experiences of women.

This work has developed in stages while working on my spurts of inquiry that eventually led to the discussion on the rights and justice. My previous field study (published as *Women and Domestic Violence Law in India: A Quest for Justice*, Nigam, 2019a) has provided me with insights into the obstacles that emerge at different levels. Accordingly, I wrote an occasional paper then (Nigam, 2017) in which I have tried to connect the dots on how the law operates at the ground level when the police refuses to register women's complaints to the level of top judiciary and when the courts reject the complaints while turning women away as 'liars' and 'gold diggers'. All these factors together show how the legal system is denying justice to women.

In this book, I analyze the arguments being given against the domestic violence law by utilizing the secondary data. I refer to the multidisciplinary research studies and reports besides examining the case laws to map the diverse views. To investigate the questions that arise regarding 'false cases', I have culled out data from various fields such as law, political sciences, sociology, history, human rights, women's studies, medicine, psychology, development studies, and jurisprudence. Moreover, this work challenges the conventional thinking of justice as it operates in the courtrooms from the perspective of feminist jurisprudence. It counters the arguments raised by the state to dilute the legal provisions. The objective is to examine how the misogynist, malicious, ill-informed propaganda by the state agencies is hindering the law enforcement and to argue that the state could focus to eliminate patriarchy, eradicate violence, and facilitate the access to justice.

I must add that the arguments present here are not conclusive. Many more steps are required to challenge the age-old patriarchal culture that prevails

and harms the families and the society. This work explores the debate from the perspective of the victims to counter the current one-sided discourse that is affecting both the sides litigating in the courts, and more importantly, affecting the children who are suffering adversely in the process.

While interrogating the dominant notions, this work achieves several goals. It analyzes the operation of the law from the feminist perspective and in the process, it challenges the conventional stereotypes and myths prevalent within the legal system. Second, it examines how the law regulates the violence and silences the feminist voices and the ways the discourse of the rights and justice is handled by the state agencies in a problematic way. The third goal this book achieves is that it draws together issues and debates surrounding the operation of law from the perspectives of battered women. The fourth dimension brings an insight from the social perspective to combine it with the legal theory and with feminist sociology. At the broader level, this work challenges the notion of the formal equality and legal neutrality while advocating that the jurisprudence should look at the structural inequalities that exist within the institution of family and argues that the grammar of justice may address the women's concerns in the specific sociocultural context while using the concept of substantive equality to remedy the situation of injustice.

Elsewhere, Kate Manne (2018) in her extensive work has used the term '*himpathy*' to explain that the misogyny is not about the male hostility or hatred of men toward women but it is about controlling and punishing women who challenge male dominance. Ferraro (1996) maintained that domestic violence discourse challenges the cultural acceptance of male abuse against women where emancipatory progressive ideas have collided with the conservative impulses to maintain and strengthen the family values. Similarly, in this book, I have argued how the privileged men obtain the benefits of misogyny and the way the androcentric courts use the conservative ideologies to interpret the oppressive situation to sympathize with the oppressors rather than empathize with the battered women. In doing so, the state ends up victimizing and penalizing the complainants. Women who raise their voices are seen as challenging the male hegemony. To control and punish such women, the state turns them away while reiterating the fact that home is the place where men control and rule.

This work calls for highlighting the gender justice approach and examines the context of the nature of judgments pronounced by the courts. It raises questions as to why the state is diluting the law when at the ground level the incidences of violence are increasing and law is the only tool these women have to negotiate their concerns in the absence of all other socioeconomic measures such as availability of shelter homes, medical aid, legal aid, and other support interventions. It examines the way backlash operates within the courts where despite the fact that theoretically, the law fosters women's

rights, practically, it is twisted to cater to the whims of the patriarchy. This work connects the ground realities with the operation of the law and recommends that the legal system should take actions to make violent men accountable for their unlawful actions while ensuring the rehabilitative and compensatory justice for complainants. It argues that the discourse pertaining to the abuse of law has diverted the attention from the seriousness of the crime or debating the measures to eliminate violence. It suggests utilizing the rights-based justice paradigm to redress the complaints in a fair and unbiased manner. While addressing the larger realities of domestic violence, the concepts such as the battered woman syndrome, power and wheel theory, coercive control, inequalities in the relationship, and other such nuances need to be examined in the Indian context rather than solely focusing on the myths relating to the 'false cases'.

Chapter 1 examines the concept of domestic violence, its meaning, its magnitude and dimensions, the cost it entails for the families and communities, the theoretical debates, and legal remedies around the world. It argues that before making any statement regarding the misuse of the law, it is important to understand the context in which the laws have been formulated. The seriousness of the issue lies in the fact that the violence or threat of violence in homes is affecting half a billion women in the country and cannot be negated by the prevailing myths and prejudices.

Chapter 2 examines how the myths and misogyny operate within and outside the courtrooms. While analyzing the verdicts pronounced by the courts, the advisories issued by the ministries, the reports by the Law Commission, and other documents, it elucidates that consistent efforts have been made over the years to dilute the legal provisions. Due to the backlash, the crime is accorded low priority. The courts are rather penalizing the complainants, and, in the process, ignore the important dimensions or the finer nuances such as coercive control, economic abuse, the impact of violence on children, cost of abuse to the society and economy, and a myriad of such issues. It argues that the law remains underused and that the law that was formulated to protect abused women is currently being utilized to protect the privileges and entitlements of those who hold power within the families, communities, and society.

Chapter 3 analyzes the arguments raised by the courts that 'disgruntled women' are misusing the law. It describes who 'disgruntled women' are, examines why are they 'disgruntled', and asks if they can access legal system easily and expect swift justice. It also explores the problems relating to the access to justice and suggests that the binary created by the state of 'disgruntled women' or the 'genuine complainants' is adversely affecting the process of justice. Backlash is charging women and feminism for the crime that violent men perpetrate. The backlash deviates the attention from the real problems, increases the distrust of common citizens in the system, and fails to resolve the genuine complaints. It suggests that the attitude of the

stakeholders in the system about the gender roles and the rhetoric promotes the politics of fear.

Chapter 4 highlights the fact that domestic violence law is enacted to respond to the violence or the patriarchal terrorism that takes place inside the home. At the same time, the conviction rate is low as the police is hardly making arrest. The state is colluding with abusers to ignore the oppression of women while dubbing the violence as a dispute. Moreover, the available data are twisted to create a false hype and an untrue myth is created by the media that jails are filled with *saas*, *nanands*, or the innocent relatives of the husband. Analysis of statistics from the prisons shows the contrary. Instead of addressing the real issues that plague the legal system, many efforts are being invested in painting the complainants as ‘bad’ or ‘vindictive’ while dismissing the women’s need for security, safety, and bodily integrity. Gender-biased norms drive the institution and individual consciousness.

Chapter 5 explores the culture of silence around violence and the impunity associated with it and how it works to enhance the crime of domestic violence. It argues that the policies and laws for women empowerment being made for decades could not alter the deeply embedded belief of male supremacy; rather, the system propagates the culture of women’s subordination in which men go to the extent of using law as a tool to suppress women by filing retaliatory litigation cases known as strategic lawsuits against public participation (SLAPP). Hence, the culture, the privileges, the law—all work against women. Moreover, the attitude of victim blaming helps create a climate of intolerance, reduces inhibition against violence, makes it more difficult for women to report violence, and promotes the atmosphere of social passivity. The permissiveness and omissions by state institutions and functionaries are harming the society in the long run.

Chapter 6 examines the economics of marriage, costs, expenses involved in celebrating weddings and arranging dowry while connecting it to the way the law works at the time of separation of the parties. It argues that at the time of divorce or separation, a woman is entitled to receive only her *stridhan*. None of the personal laws provide for equal division of matrimonial property even after a woman has spent years in a marriage. The maintenance granted by the courts is not sufficient and, more importantly, remains unpaid on one pretext or the other. Also, newer forms of economic violence are being inflicted on women that enhance women’s vulnerability within a marriage. The argument that women are ‘gold diggers’ is falsely propagated by men to escape their economic liabilities and to deny women their economic dues. The way the system works is that complainants hardly receive anything and end up spending scarce available resources on litigation. Instead of ensuring restorative or compensatory justice, the system acts to reiterate patriarchal values.

Chapter 7 examines the arguments for and against marital rape and maintains that marriage is neither a license to abuse women nor it is a license to

rape. Rather, marital rape is much serious a crime as compared to rape by a stranger; it is continuous from where a woman can find no escape. It is worse than the crime of custodial rape, humiliating, and against the dignity of a woman. The arguments raised by the state to not criminalize marital rape are mere lame excuses to deny women any justice or a life free from violence.

The book concludes that a large number of women are approaching the courts with their complaints of domestic violence. They are voicing their concerns and are invoking their citizenship rights as granted to them by the Constitution. However, the courts are reinforcing the dominant regressive values. Though the law provides a platform to women to raise their concerns, yet at the same time, the state is denying justice to women while twisting and manipulating the legal process. The work argues that it is necessary to eliminate stereotypes, myths, misogyny, and sexist norms that guide the operation of law to pave the way for gender justice. Instead of debating about the ‘false cases’, efforts may be made to eradicate violence itself and eliminate patriarchy. The approach of the misogynist (in)justice as prevalent today needs to be encountered. The term ‘justice’ has to be understood broadly in the Indian context and to do that, I deploy the Nancy Fraser’s trivalent model of justice in the broader feminist scholarship of gender and law that discusses three aspects of justice—economic, sociocultural, and political.

Notes

- 1 I came across this report while I was invited for the Seminar on Dowry Law held in February 2019 at the University of New South Wales, Sydney, Australia. I thank the organizers for inviting me.
- 2 Adapted from the Crimes in India published by NCRB, Government of India. Data from 2006 to 2019 have been culled out pertaining to specific legal provisions

1

DIFFERENT DIMENSIONS OF DOMESTIC VIOLENCE IN INDIA

Patriarchy requires violence or the subliminal threat of violence in order to maintain itself. . . . The most dangerous situation for a woman is not an unknown man in the street, or even an enemy in the wartime, but a husband or lover in the isolation of their own home.

(Gloria Steinem, 1992)

According to the World Health Organization (WHO, 2013), worldwide one in every three women is being beaten, coerced into sex, or abused in some other way. Domestic abuse is a major pervasive human rights violation issue that has permeated the boundary of class, caste, religion, geographical territory, and other variables, yet it remains under-reported and least understood. Violence perpetrated against women within the confines of ‘sacred spaces of home’ by the so-called protectors is a serious issue that needs in-depth scrutiny. This chapter examines the concept of domestic violence, its magnitude and dimensions, the cost it entails for the families and communities, and the legal remedies being deployed around the world. It argues that before making any statement regarding the misuse of the law, it is important to understand the context in which the laws have been formulated. The seriousness of the issue lies in the fact that the violence or threat of violence in homes is affecting half a billion women in India and cannot be negated by the myths of misuse of law.

The obnoxious matrix of domestic violence

‘Newlywed woman thrashed, threatened with live wire over dowry’ (Rai, 2020).

‘Bengaluru man burns wife’s private parts after argument over dowry’ (The Times of India, 2020c).

‘Wife asks for Rs 30 to buy veggies, man loses cool, gives her triple talaq’ (Latestllaws.com, 2019).

- ‘Woman and 3-month-old daughter burnt alive over dowry demand in UP’ (The Logical Indian, 2019).
- ‘Chandigarh woman killed for dowry, body kept in refrigerator’ (The Hindustan Times, 2019a).
- ‘Gujarat Shocker: Husband throws wife, two children out of the house over coronavirus fear’ (Jagran.com, 2020).
- ‘Bengaluru man kills wife hooked to social media, their baby’ (Kumar, 2019).
- ‘They beat me really hard: Daughter-in-law of retired HC Judge’ (Smitha, 2019)
- ‘Man kills pregnant wife, sleeps next to the body, walks into police station next day to confess crime’ (News18.com, 2019).
- ‘Andhra man beheads wife, walks with severed head on the street’ (Outlook, 2019a).
- ‘Fed once a day, forced to live in filth: Kerala woman locked up by family for 20 years’ (CRIS, 2019).
- ‘Bangladeshi man shaves wife’s head after finding hair in food’ (Outlook, 2019b).
- ‘UP man ties wife to fan, beats with belt, sends video to in-laws asking for dowry’ (The Asian Age, 2018).
- ‘UP woman burnt alive allegedly by husband, in-laws over triple talaq case’ (Pandey, 2019).
- ‘Husband, in-laws burn woman to death for failing to get car in dowry in UP’s Muzaffarnagar’ (News18, 2018b).
- ‘Man beheads wife, tries to display head’ (The Times of India, 2019).

The list goes on. Numerous similar news items appear about barbaric incidents that are happening every day despite the existence of laws to deter violence. These news reports present the serious cases of brutal abuse as one-time incidents or an aberrant behavior that occurs in some relationships while hiding the gravity of the crime. What is ignored is the fact that domestic violence is grounded in the centuries of tradition, inflicted by those who are deemed as ‘protectors’, in a ‘sacred’ space called ‘home’ that is supposed to ensure safety and comfort. In cases of violence by strangers, a home provides a sense of security, but in a situation in which a woman is abused within the home by those who are entrusted with the obligation to ‘protect’ her, she finds no escape. It becomes worse than custodial torture situation. In the home, a perpetrator exhibits his power and authority continuously over a prolonged period. The fact that women are located in the position of vulnerability because of their emotional and economic dependence on men has major implications. For a victim, the trust within the relationship no longer exists, the word ‘home’ loses its meaning as it no longer remains safe.

What is domestic violence?

Domestic violence is also known as intimate partner violence, wife battering, cross bedroom terrorism, or patriarchal terrorism. It is centered on three key elements—violence, domesticity, and structural inequality (Dempsey, 2006). Domesticity contextualizes both spatial location and relationship between the abused and the victim; structural inequalities work through the paradigm of power and control, while the violence is continuous. Domestic abuse is rooted in patriarchal traditions in which an abuser feels it is necessary to control women (Johnson and Leone, 2005). Johnson (1995) identified different types of violence and used the concept of patriarchal terrorism. Other theorists have described the pattern of power and control behavior as depicted by the power and wheel theory (Pence and Paymar, 1993) that includes emotional or economic abuse, using children, using male privilege, threat, intimidation, and blaming. Okin (1989) opined that in an asymmetric, gendered society, heterosexual marriage enhances women's vulnerability and causes economic subordination under the guise of moral protection.

The roots of domestic violence are deeply entrenched and began with the emergence of a pattern of monogamous pairing relationships that is devised in a way in which a man is entrusted with the authority to control the woman and enjoys privileges such as identity and decision making (Martin, 1976). A woman's job is restricted to 'procreation and child rearing', 'looking after' the needs of her husband and children, and taking care of the household. Such heterosexual arrangements are ubiquitously legitimized. The state regulates to reward such arrangements while stigmatizing all the other forms of relationships. Engels (1884) contended that this arrangement serves as a tool to perpetuate patriarchal relations through control of labor, reproduction, and property. Friedan (1963) saw housewives trapped in the 'chains of mistaken ideas and misinterpreted facts of incomplete truths and unreal choices'. Frequently, restrictions are placed on the married women. They are not allowed to manage property or enter into contract. A home is considered to be a 'man's castle'. He is seen as the preserver of its sanctity. For a woman, a home is a refuge that confers her protection from the outside world and therefore, she should show her loyalty and be compliant in return (Dobash and Dobash, 1979). As a chattel, a wife 'belongs' to her husband, and any act of violence is considered a private matter. The English common law allows a husband to chastise his wife to maintain discipline (Blackstone, 1765).

While questioning women's subordinate status, John Stuart Mill (1869) in his thesis on the '*Subjection of Women*' argued that man as 'a master not only wants a woman's labor but also her sentiments. He conspires to this desire for a submissive docile slave over whom he could have an absolute control'. Mill rejected the 'cult of domesticity' and wrote that marriage is form of slavery that confers power to men and to "not only to good men

or decently respectable men, but to all men, including the most brutal and most criminal” who are benefitted by it (p. 47). Simone de Beauvoir (1949) referred to Hegel’s master–slave dialectic as analogous, in many respects, to the relationship of man and woman. This proposition treats woman as the ‘Other’ in relation to man. Therefore, for ages, men have mistreated, assaulted, and battered their wives and used various modes of abuse such as coercive control, emotional and economic violence, and other forms of oppression.

Domestic violence entails coercive control

Coercive control is a way in which an abusive person uses various tactics to gain power and control over a victim by subjecting her to psychological, economic, sexual, and other forms of abuse and by exploiting her vulnerabilities. Hills (2019) noted that ‘real abuse’ is something more than physical violence and entails interconnected behaviors. She explained,

after all it is not a crime to ask your girlfriend to no longer see her family. It’s not a crime to tell her what to wear, how to clean the house and what she is allowed to buy at the supermarket. It’s not a crime to convince your wife that she’s worthless or to make her feel that she should not leave the children alone. It was not a crime to say something happened when it did not—to say it so many times that that you break the sense of what’s real. You cannot be ready for turning anyone’s family. And yet, these are the kind of controlling behaviors that show up red flags for domestic homicide. By the time that ‘real’ crime occurs, it’s too late.

She explained that the abuser uses the technique of brainwashing as elucidated by Biderman in 1957 while working with American soldiers or prisoners of war in North Korean camps. He established that an abuser uses coercive control methods: Dependence, debility, and dread. According to him, the captor attempts to control all aspects of victim’s life using eight techniques—isolation, monopolization of perception, induced debility or exhaustion, cultivation of anxiety and despair, alteration of punishment and reward, demonstration of omnipotence, degradation, and enforcement of trivial demands. Biderman’s Chart of Coercion shows that the acts of cruelty that may appear as isolated actions are intricately interconnected and when these isolated actions are seen together, the full picture of coercive control becomes clear.

This concept of coercive control is further developed by Stark (2007), who argued that controllers do not just abuse their partners to hurt or humiliate or punish them; instead they use techniques such as isolation,

threat, humiliation, intimidation, monitoring, financial control, gaslighting, and surveillance to strip the victims of their liberty and take away their sense of self while creating hostage-like conditions for entrapment. Such behaviors are damaging and may cause severe harm. According to Stark (2012), the aim of coercive control is total subjugation and domination. He suggested that criminalization of controlling behavior encourages the justice system to recognize individual acts of violence as part of a broader pattern of abuse making them harder to dismiss and easier to prosecute (Stark, 2004).

The laws in the West see abuse as a continuous pattern and many countries criminalized controlling behavior in the relationship. In 2015, England became the first country to criminalize coercive behavior (UK Government Home Office, 2015). Ireland (RTE, 2019) and Scotland (BBC News, 2019) too have realized the adverse impact of power dynamics in the relationship and criminalized the coercive control behavior. The laws in the Western countries also penalize economic and all other forms of violence and provide a range of remedies in terms of protection orders, compensation orders, shelter, and protecting the right of women relating to family property settlement.

Feminists' legal response in the West has emerged as a response to patriarchal oppression of women and emphasizes addressing the structural inequalities. It focuses on sex equality theory, which presumes that people are autonomous individuals making decisions in self-interest and therefore argue for choice (Law, 1984). The dominance approach portrays power and inequality in the relationships between men and women that act to subordinate the latter (MacKinnon, 1979). Both these approaches are based on Kantian assumptions that to be human implies some sense of autonomy. Gilligan (1982) stressed the importance of care relationships, while West (1987) argued that women's sufferings are dismissed and trivialized by the legal system and proposed that the critical legal method should aim for women's subjective well-being while lessening women's pain and misery (West, 1997).

However, in India, despite the fact that violence persists, the country lags behind in the legal advancements while the system has failed to see the nuances of the domestic abuse. Also, the services such as shelter homes, short-stay homes, medical facilities, or rights such as those relating to matrimonial property division are hardly made available; rather, the system of giving and taking of dowry and dowry abuse is still flourishing despite the fact that the law prohibits the same. The law in India has not yet examined the finer aspects of domestic violence such as the battered woman syndrome, Stockholm syndrome, power and wheel theory, coercive control, and other nuances despite the fact that India is reporting the high number of cases pertaining to domestic violence, abetment to suicide, and dowry deaths every year.

Inequitable marital relations and domestic violence in a patriarchal society

In patriarchal societies such as India, violence has different connotations because marriage is not based on equality, companionship, or partnership. Patriarchy creates an institution consisting of an uninterrupted hierarchical system of shaping and defining identities; it organizes kinship and division of labor and structures property rights while establishing male control over women's sexualities, mobility, and labor. Families socialize individuals to accept gender subordination. The biological differences between men and women are used to portray women as subhumans. Hierarchy and inequality exist in the families where women are expected to be the 'nurturers and carers' while men are deemed as 'providers' expected to make decisions and control resources. Family ideology operates to venerate women's role as a mother and a wife and promotes subjugation while glorifying the sufferings for the larger benefit of the family.

Patriarchal cultures construe men as powerful, commanding, and non-emotional, and visualize women as weak, dependent, vulnerable, pliant, intuitive, sympathetic, and an object, owned and controlled by men (Sarkar et al., 1994). Hence, commonly, men are being conditioned to be aggressive whereas women are being conditioned to be the silent recipients of abuse. No deviation is tolerated. Complaints made by women against such abuse are treated as irrational. Fractured marriages are considered abnormal and undesirable. Existence of a woman as an independent being does not fit into this rigid, heterosexual, and male-dominated idea of the family. Feminist interventions with regard to violence are equated with destruction of a sacrosanct institution whereby those raising questions are seen as family breakers (Hirsch, 1998).

Among Hindus, marriage is considered a sacrament. A woman after her marriage is expected to shift to the husband's house or *sasural* as his dependent. Upon marriage, a man as a father gifts his daughter accompanied with other valuables or dowry, in a ceremony performed during the marriage called '*kanyadaan*' to her potential husband. Her potential husband takes a vow that he will take control of her being and her sexuality. Therefore, a relationship is established between the two families. However, this relationship is hierarchical where the 'giver' of the daughter as well as dowry is put at the lower pedestal. A woman's agency, her decisions, and choices are ignored while objectifying and devaluing her personhood in the process.

Patriarchy vests men with the right to control and dominate. The practice of patrilineal arrangements where property and identity rest with men further intensifies a woman's vulnerability. A Hindu home views a male patriarch or *Karta* as one who rules over his dominion as the head of the Hindu Undivided Family (HUF). The law recognizes the HUF as an independent legal entity having its unique position. It enjoys several rights and

privileges (Gupta, 2013). Customary inheritance practices privilege sons in the matter of the ancestral property. *Mitakshara* school of law recognizes the joint family as a group of coparceners where patrilineally related males have a joint right to property. Similarly, the *Dayabagha* school of law as well as other communities accommodate a family pattern where couples related through patrilineal links, fathers, sons, and brothers with their wives and children are recognized as having a common blood line. The Hindu Succession Act of 1956 (HSA) reinforced this position. It changed only after amendments were made in 2005.

The traditions, rituals, and practices promote this image of a perfect wife or *pativrata*, an ideal mother and an obedient daughter-in-law. Chakaravarti (1992) elucidate that the concept of '*pativrata*' woman is used to push self-imposed control to ensure that the upper caste women remain chaste. The supremacy of the heterosexual family is entrenched and replicated through other institutions, religious literature, cinema, advertising, television, business, and other means by reinforcing an image of 'perfect marriage' that is sacrosanct and the role of a 'good wife' as that of a multitasker, sacrificing, and a perfect woman. Privileges are granted to those who fit into this role. In case a woman dares to defy given norms, violence is used to show her, her place (Agnes, 1990a). The state, because of its vested interest in maintaining the status quo, reiterates the dependent position of women to keep the 'family' intact.

A traditional Hindu family is equated with the idea of an 'ideal Hindu nation' that characterizes the social organization of day-to-day life (Sarkar T., 2001). The concept of family is premised on the notion of the Brahmanical hegemony as pushed by *Manusmriti*. Women in this schema are relegated to secondary position. Any move toward equality between sexes is seen as a threat to the sociopolitical goal of the *Hindutva* agenda. The right paradigm based on democratic norms finds no place where women are seen as a carrier of the patriarchal values and are therefore burdened as preservers, keepers, and nurturers of the cultural discourse of tradition, purity, and morality. This patronizing system upholds the belief that women are weak and need to be 'controlled' as daughters, wives, and mothers. As per this notion, a woman's individual needs or interests should be sacrificed to the larger interest of the family and the nation. Older women can assert their power in covert form over the younger ones (Mies, 1980). Fertility is a weapon a young wife may utilize to acquire a degree of power in her husband's home. Her status is co-related to her ability to beget sons and goes higher when she becomes a mother-in-law (Das Gupta, 1996).

Is family providing protection to women?

Family is seen as a crucible for love, comfort, and safety; however, not all families are protective. As per a study, six women are being killed every

hour by people they know (UNODC, 2018). Moreover, the family conditions its members to see violence as a normal part of life. The so-called family virtues are transferred from one generation to another to reiterate gender divisions while specifying separate spheres for men and women in the household. Norms of segregation and seclusion, respect for authority and compliance, all are taught within the families. A boy in a patriarchal family who grows up seeing violence as a tool to discipline women inherits the notion that violence is normal. Family also trains and equips women to bear the trauma and sufferings silently.

Thus, the situation existing today is such that many women are forced to bear violence silently. The National Family Health Survey-3 (NFHS-3) in 2005–06 reveals that 54 percent of women and 51 percent of men agree that it is justifiable for a husband to beat his wife. The survey indicates that two out of every five women in the age group of 15 to 49 years reported having faced domestic violence in their lifetime. A quarter experienced rape and sexual assault with objects. Twenty-six percent stated that their husbands exercise control and get jealous or angry if they talk to other men, 18 percent husbands do not trust their wives with money, 16 percent do not allow their wives to meet their friends or family, while others accuse their wives of being unfaithful. Only one in four women who faced violence had sought help, whereas two out of three decided not to tell anyone.

Prevalence, extent, and impact of domestic violence

Several studies conducted worldwide show that women suffer the major mortality risk at the hands of their intimate partners rather than any other types of assailants (Bachman and Saltzman, 1995). Ellsberg (2006) observed that almost 40 to 70 percent of women die due to violence by their partners. Other studies show that battered women are more likely to visit the private physicians due to physical injury occurring as a result of assault by their male partners (Stark and Flitcraft, 1996). Population-based studies suggest that 40–72 percent of all women who have been physically abused by a partner are injured at some point in their life (Romkens, 1997; Harper and Parsons, 1997). A report by World Bank (2018) noted that more than one billion women lack legal protection against sexual violence by an intimate partner and close to 1.4 billion lack legal protection against economic violence.

In South Asia, regional prevalence of partner violence is high and it is highest in India where women are abused multiple times (Solotaroff and Pande, 2014). Besides being a cause of high mortality among women, domestic violence is leading to high morbidity. Those who survive suffer physically and psychologically. Many are unable to make their own decisions, voice their opinions, or protect themselves and their children for fear of further repercussions. Threat of violence denies them their claim to live peacefully.

Magnitude of violence against women in India

One of the leaders of the Shiv Sena, Uddhav Thackrey, the current Chief Minister of Maharashtra, while taking a dig over growing incidents of mob lynching by cow vigilantes in July 2018 alleged that the ‘cows are safer than women in India’ (The Telegraph, 2018). Though it may be considered a political statement, it is evident from the available statistics that crimes against women are escalating. Crimes in India published annually by NCRB indicates that as many as 39 crimes against women are reported every hour. More specifically, in the context of domestic violence, it is said that

In this silent war (domestic violence and dowry violence) waged by society against women more lives have been lost than in any war on the frontiers of independent India.

(Agnihotri, 2001)

Domestic violence is widely prevalent and permeates the everyday lives of women. It is associated with poor physical and mental health besides its adverse impact on their survival. However, the underreporting of crime is huge. Not many cases are reported.

Underreporting of domestic violence

Domestic violence is more than a wife being slapped once or raped on another occasion. It is about an atmosphere of terror and fear that a woman faces, because she is constantly being controlled by the abuser. The experiences shared by women’s organizations indicate that frequently, women do not report domestic violence incidents. Social norms, stigma, lack of resources, absence of sensitive forums, lackadaisical attitude of enforcement agencies, the future of kids, the importance of preserving the family, socio-economic compulsion, and the patriarchal conditioning prevent many from reporting the crime. Frequently, a battered woman fails to receive the much-required help. The needs related to mental health care is not even talked about in such environment. According to a decade of data on 1,357 abused women, who accessed services from 2001 to 2006, it was reported that only 40 percent went to the police. A third of those who did not approach the police had faced violence for three to five years, two-thirds had faced violence during pregnancy, and a third had attempted suicide (Bhate-Deosthali et al., 2012). Vimochana, a social organization, observed that in Bangalore, 70 percent of young married women died because of unnatural deaths (Fernandes, 2011). Yet the media shies away from reporting issues pertaining to domestic violence or dowry deaths. Perhaps, the reports pertaining to violence in homes do not generate much sensation as it is a common phenomenon. Silence is maintained even when a woman commits suicide or is

burned alive within the four walls of the house. What is overlooked is the seriousness of the issue and impact of violence on not only individuals or families but on the community and society as a whole.

Higher rate of suicide among married women

On 24 February 2021, Ayesha Banu (24), residing in Ahmedabad, married to Arif Khan, recorded a video before she committed suicide by jumping into Sabarmati river (Mitra and Sengupta, 2021). She was facing harassment for dowry. A few days later, another news item appeared that said Rashika Jain (25) fell from third floor of terrace in Alipore, Kolkata. Her parents alleged that she was subjected to routine inhuman torture and abuse even after they have given 7 crores as dowry (Ranjan, 2021).

Suicide is a global health issue. According to estimates by the WHO (2008), nearly 900,000 people worldwide die from suicide every year, including about 170,000 in India. Seventy-eight percent of suicides occur in low- or middle-income countries (WHO, 2018a). Asia accounts for 60 percent of the world's suicides (Beautrais, 2006). Suicide is a leading cause of death among Indian women in the age group of 15 to 49 years (Patel et al., 2012). It rose by 126 percent during 1990 to 2010 (Kay, 2013). The NCRB Report, 2019 shows that 21,359 housewives committed suicide.

The data show that on an average, nearly 2.5–3 times, women attempt suicide as compared to men (The Times of India, 2016b). Family problems accounted for an average of 84 suicides a day. The percentage of suicides by married women is 67.9 (Pereira, 2016). In 2014, 20 thousand women took their lives and the same year 5,650 farmers killed themselves (Biswas, 2016). This is not to dismiss the seriousness of the agrarian crisis, yet society pays little attention to suicides committed by the housewives (Mayer, 2016). Some scholars view that suicide cases are underreported, and in some areas, rates are as much as four to six times higher than the official records (Gajalakshmi and Peto, 2007; Soman et al., 2009). Others noted that due to problems in methodology, classification, and other technicalities, the data obtained may have errors (Sainath, 2015), yet the suicide rate among married women is high and this fact remains invisible in the public domain.

Mayer (2016) argued that female literacy, family size, level of exposure, and other indicators of female empowerment correlate to a higher suicide rate among women. Other studies reported factors such as a person's ability to handle stressful situations, social and emotional pressures, and availability of the support network. Domestic violence and economic reasons could be the precipitating factors (Saha, 2015). Moreover, in countries such as India, Pakistan, and Sri Lanka, where arranged marriages are common, the social and familial pressure on a woman to stay in an abusive relationship appears to be one of the factors that increases the risk of suicide in women (Gururaj et al., 2004). Besides, a young bride may be harassed for dowry

to the extent that she commits suicide (Kumar V., 2004). There is a need to conduct in-depth research on the issue of higher rates of suicide among married women.

Fire-related deaths among married women

WHO (2018b) estimated that 180,000 deaths annually are caused by burns. The vast majority occur in low- and middle-income countries. The South East Asia region accounts for just over one-half of the total number of fire-related deaths worldwide (WHO, 2001–2007). Studies show that more Indian women aged between 15 and 50 are prone to fire-related deaths as compared to women in other countries. The ratio is 18 times more than Pakistani women and 38 times more than Chinese women (Saha, 2017). An NCRB report (2015) stated that 17,700 Indians died due to fire accidents, of which 10,925 were women. Bride burning is identified as a major cause.

According to the National Burns Program, out of an estimated 7 million burn injuries in the country annually, 1,40,000 are fatal and out of these 91,000 are deaths of women, a figure higher than that for maternal mortality (Gupta, 2010). The ratio of fire-related deaths of young women was three times higher than that of men in the same age group (Sanghavi et al., 2009). The statistics are screaming the fact that the law is underused and inadequate and that it has failed to curb the incidences of bride burning.

Other studies report that when dowry expectations were not met, the young brides in the joint or extended families were murdered, frequently by burning. Many were doused with kerosene and set alight, majority sustained 70 to 80 percent total body surface area injury. Most victims died immediately or within the 24 hours due to hypovolemic shock (Kumar and Tripathi, 2004; Sharma BR et al., 2006). Murders occurred within the initial years of marriages and most women sustained burns in marital homes (Mohanty et al., 2013). Offenders include husbands and his family members. Agency of these male and female members is depicted through the range of their actions from incitement of violence to actual participation in committing the crimes (Kumar, 2003; Mohanty et al., 2004). Another study noted that 91 percent of burned wives were Hindu and had no children (Shaha and Mohanty, 2006). In many cases, investigation was not done properly (Jutla and Heimbach, 2004). Agnihotri (2002) found that the offenders disposed of the body without informing the police or the relatives of the deceased. Hence, the available research indicates the gravity of the situation, yet the state actors are concerned about ‘false cases’.

Violence is not seen as a comprehensive issue with its social or criminal-justice aspects as well as its clinical or public health dimensions. Studies have reported that burn deaths are categorized as accidents, suicides, and homicides (Bhate-Deosthali and Lingam, 2016). This is because of misleading reporting, including poor documentation by health providers, no

inquiry into a history of violence, and fear of police investigation (Bhate-Deostahli, 2016). Medical literature does not engage in sociopolitical context or raise suspicion as to why women die in their marital home and not in the natal home (Bhate-Deosthali, 2015). Most of the cases of bride burning are planned acts; therefore questions must be raised about the role of the family members in terms of extinguishing fires, seeking help, or providing the first aid. However, this is not being done. CEHAT, a research center located in Mumbai, observed that in 62 percent of the cases, a difference was observed between the information about the cause of burns as the medical records stated the reasons as ‘accidental’ or ‘no information’, while the counselors mentioned the causes as suicides, homicides, and violence (Belur et al., 2014). Health care providers share the predominant sociocultural norms that sanction male dominance (García-Moreno et al., 2014). Ironically, the dowry movement during the 1980s was initiated for the reason that large number of daughters-in-law were dying due to ‘stove deaths’. Four decades later, the situation has not changed. No strategies have been developed to prevent such deaths; perhaps, women’s lives were deemed to hold no value.

Impact of domestic violence

Domestic violence endangers the life of women and children. It undermines women’s health and well-being directly or indirectly and causes chronic morbidity, depression, psychological ailments, and high mortality (Ellsberg et al., 2008). A study shows that worldwide, violence accounts for as much death and illness in women aged 15 to 44 as cancer and is a greater cause of ill health than traffic accidents and malaria combined (Venis and Horton, 2002). Living in a violent relationship affects a woman’s sense of self-esteem and her ability to pursue jobs or a career (Lloyd and Taluc, 1999). It reduces the capacity of the victim to participate in worldly affairs. Battered women often are unable to connect with their friends or the wider community. At times, they are unable to look after themselves or take proper care of their children. It reduces the capacity of survivors to contribute to the society and hinders their participation in the public life.

Health consequences

The health consequences of battering include physical injuries or multiple hurts and may require serious medical interventions or emergency care. It may include disabilities, higher risk of communicable diseases, brain injuries, and cardiovascular diseases (WHO, 2016). It may also include both internal and external injuries, ranging from wounds, cuts, bruises, fractures, bleeding, organ damage, loss of limb, broken bones, disfigurement, disabilities, burn, or death (Ellsberg et al., 2000). Common sites of injury

include eyes, sides of the face, throat, neck, upper and lower arms or legs, scalp and head, and the musculoskeletal system (Bhandari et al., 2006). For many, battering occurs repeatedly over a prolonged period, and the physical assault is not an isolated event but part of a continuing pattern of abusive behavior. Influence of abuse is not only immediate but it can also persist long after the abuse has stopped, where victims reported deleterious distress resulting in increased needs for medical treatment (Koss et al., 1991).

Besides, there are other forms of harmful acts aimed at intentionally hurting the victim and include, but are not limited to, pushing, grabbing, twisting the arm, pulling the hair, slapping, kicking, punching the face, biting or hitting with the fist or object, trying to strangle or suffocate, acid attacks, scalding, or attacking with weapon, which may lead to trauma (Sheridan and Nash, 2007). Physical assault and attempted strangulation may result in traumatic brain injury (Kwako et al., 2011). Brain injury also occurs due to the multiple blows to the head over a longer period of time and may cause significant disability (Ferrier, 2018). Other spectrum of injuries includes sprains, fractures, and dislocation (Diaz-Olavarrieta et al., 2002). Physical violence is linked to the increased risk of developing heart and blood vessels related diseases, including stroke, anemia, and chronic fatigue (Ackerson and Subramanian, 2008), asthma, severe effect on the immune system, and inflammation (Subramanian et al., 2007). Majority of women using emergency departments and primary clinics reported headaches, stomach problems, pelvic pain, vaginal bleeding, substance abuse, depression, and suicidal thoughts (Kramer et al., 2004).

The cumulative impact of different types of abuse and of multiple episodes may result in serious harm (Follette et al., 1996). The more severe the abuse, the greater its impact on a woman's physical and mental health (Leserman et al., 1996). Abused women experience reduced physical functioning (Golding, 1996). Above all, victims are afraid to seek health care. They may lack resources or may be unable to do so because of their compelling circumstances, including fear, shame, or stigma. Frequently, abusive partners prevent women from seeking care (Human Rights Watch, 2003). In the developing countries where health care facilities are not easily available at affordable rates, women's ability to access services is inhibited.

Impact on women's sexual and reproductive health

Research studies show that women exposed to violence experience sexual and reproductive health problems, including forced sex, unwanted pregnancies, adverse maternal and newborn health outcomes, STIs, human immunodeficiency virus (HIV), gynecological disorders, which may result in contraceptive failure (Raj and Lotus, 2015). Gynecological consequences of intimate partner violence (IPV) include excessive vaginal bleeding, chronic pelvic pain, inflammatory disease, urinary tract infections, and

poor obstetric outcomes (Krug et al., 2002). Pregnant women, for fear of violence, are unable to refuse or negotiate safer sexual practices (Uthman et al., 2009). Fear of male reprisal is a barrier to using the family planning method. Cook and Maine (1987) found that when family planning clinics in Ethiopia removed the requirement for spousal consent, clinic use rose 26 percent in a few months. In countries where marital rape or child marriage is not yet considered a crime, women are the worst sufferers.

Domestic abuse increases the risk of maternal and child mortality and morbidity. Violence during pregnancy is associated with increasing the risk of miscarriage (Parker et al., 1994); late entry into prenatal care (Kavitha, 2012); stillbirth; premature labor (Curry et al., 1998); fetal injury; four-time increased risk of having low birth weight babies (Bullock and McFarlane, 1989); twice likely to have abortion; premature deliveries (Murphy et al., 2001); and neonatal (Menon, 2015) and child mortality. It is more common in developing countries as compared to the developed countries (Devries et al., 2010). Abuse may lead to trauma to the fetus, maternal anemia, and stress. High incidences of coercive sexual violence during pregnancy occur irrespective of education or socioeconomic status and have serious consequences, including miscarriage (Chhabra, 2008), maternal mortality (Ganatra et al., 1996), fetal death, perinatal death (Zacarias et al., 2012), and affect child survival. Women may feel vulnerable and dependent on their partners during pregnancy. However, this dependency does not provide any immunity from facing violence (Zareen et al., 2009). Among new mothers, violence leads to post-partum problems (Desmarais et al., 2014) and severely affects the well-being of a child (Ahmed et al., 2006), including less breast-feeding (Metheny and Stephenson, 2020) and less attention to immunization (Sabarwal et al., 2012).

Impact of violence on the mental health of a woman

Domestic violence affects a woman's psychological well-being, leads to problems such as depression, anxiety, post-traumatic stress disorder (PTSD), and increasing tendencies to attempt suicides (Bailey et al., 1997). Abuse is associated with difficulty in carrying out daily activities. Violence diminishes coping capacity and makes one vulnerable to a range of disorders (Hegatry et al., 2013). Verbal abuse and depriving a woman of financial resources create fear and undermine her sense of security and self-confidence (Brzank et al., 2004). Psychological and emotional abuse is associated with stress, depression, anxiety syndrome, obsessive-compulsive disorder (OCD), and suicidal thoughts (Pico-Alfonso et al., 2006). A study in an urban locality in Delhi observed that women who had experienced abuse were more likely to report suicidal tendencies as compared to women who had not experienced violence (Vaccher and Sharma, 2010). Another cross-sectional survey of women attending primary care clinics in Pakistan reported a prevalence of

93.8 percent OCD among women facing violence (Ayub et al., 2009). Survivors face a three-time higher risk of developing schizophrenia and psychotic symptoms (Isabelle et al., 2015). Evidences from Nicaragua (Ellsberg et al., 1999), Pakistan (Fikree and Bhatti, 1999), and the United States (Roberts et al., 1998; Amaro et al., 1990) reveal that battered women suffer depression, anxiety, and phobias. Panic attacks, flashback, nightmares, becoming hypervigilant, difficulty in socializing, feeling miserable, constant physical and mental exhaustion, and low self-esteem are some of the symptoms that women reported in various clinical studies. Inequalities in the marriage where the status of women is subjugated may place enormous stress on their mental health (Thara, 1998). A woman is constantly compelled to adopt the nurturing role of a mother and a wife besides stereotyping her as a weak and helpless person who is emotionally as well as financially dependent on a man. This tussle in adopting different roles of a being a perfect mother and a wife leads to mental stress (Nambi, 2005). Victims have attempted to harm themselves (Choudhwry et al., 2009) or have tried to commit suicide (Maselko and Patel, 2008; Kaslow et al., 1998). Repeated and continuous threat and assault on the personhood denies her sense of worth. At the social level, a woman may feel isolated, rejected, and abandoned, which leads to her inability to make and sustain relations. Abuse affects her capacity to think and imagine possibilities in life. Fear of violence dismantles hope. Psychological trauma inflicted by violence may lead to a range of adversities, including escalating her chances to experience more violence. Men who indulge in hurtful controlling behavior may have conditions such as mental illness, narcissism, anti-social tendencies, sociopathy, OCD, paranoia, or borderline personalities (Lambert, 2017).

Impact of violence on women's work and employment

IPV affects the labor force participation in various ways. At a micro level, violence shatters the life of a woman and hinders her social, emotional, and mental well-being. At a broader level, violence has negative consequences for economies and may lead to stunted human and economic development. Violence has a severe impact on educational attainment and skill development and influences a woman's earning ability (Browne et al., 1999). Violence also involves expenditure in terms of job loss, high job turnover, lost work days, disruption of leaving home, moving and changing jobs, instability, and fewer opportunities for career advancement or promotions, besides cost in terms of safety and security (Rodgers, 1994; Duvvury et al., 2013). Domestic violence interferes with a woman's ability to work and results in poorer economic outcomes while significantly reducing the annual work hours (Tolman and Wang, 2005). A study in the US shows that women lost an average of seven days after an incident of violence (Georgia, 2003). Another study reported that violence accounts for one in every five days of life lost to women of

reproductive age (World Bank, 1993). Domestic abuse is linked to employment instability and its correlation is observed with the workplace disruptions, on-the-job-harassment, decline in performance, loss of time, and unemployment (Showalter, 2016). Women experiencing abuse have 35 to 46 percent lower earnings than women who do not experience violence (Morrison and Orlando, 1999). For survivors in jobs, it is difficult to continue with the work pressure after facing years of abuse. They struggle to manage family while working and attending court proceedings. Frequently, the perpetrator sabotages the victim's employment. Violence entails irrevocable personal damages. In the absence of welfare and child support policies, violence adversely affects the victims and their children.

Social and economic cost of domestic violence

Domestic violence entails hidden and visible costs (Duvvury, 2016). It incurs significant economic costs, both direct and indirect (Heise et al., 1999). Direct costs are calculated to include hospitalization expenses, treatment, and care; cost of legal services; costs relating to incarceration, law enforcement, and foster care; and costs associated with housing, social, and support services (Waters et al., 2004). Indirect costs include those related to reduced employment or distraction in job, lost earnings, loss of productivity, psychological costs, protection costs and other nonmonetary costs including the diminished value of a life due to violence, besides the intangible cost associated with the pain and sufferings (Walby, 2004). Violence impoverishes society. It imposes the costs in terms of erosion of the social and human capital, and perpetuation of the intergenerational cycle of violence.

Globally, conservative estimates of loss resulting from domestic violence range between 1 and 2 percent of the GDP (UN Stats, 2015). In some countries, this difference in earnings alone is equivalent to 2–3 percent of GDP, representing a sizeable loss of productivity for the country. Pfizer (2001) estimated that violence costs the equivalent of 5 percent of the gross national product (GNP) of industrialized countries, and as much as 14 percent of the GNP of the low-income countries. A scientific study has estimated that the productivity loss due to absenteeism related to violence in Uganda and Bangladesh for the main economic sectors was 1.27 percent and 1.28 percent of GDP in 2012, respectively (Duvvury et al., 2013). Further, it is estimated that each year around 8 million days of paid work are lost in the US alone because of violence. In Peru (Faculty of Administrative Sciences and Human Resources, 2014), domestic violence results in absenteeism, reduced performance, less productivity, work accident, reduced quality of work, and negative consequences for the organization calculated by damage of reputation and internal disturbed atmosphere. A report by Forbes in 2013 noted that domestic abuse costs \$8.3 billion expenses annually and includes a combination of medical cost of \$5.8 billion and lost productivity of \$2.5 billion

annually (Pearl, 2013). Overall, violence can have psychological, physical, behavioral, interpersonal, and financial consequences for victims and their children (World Bank, 1993). India needs to invest resources in conducting research on the issue relating to domestic violence and its impact on women, children, families, and the society while linking it up to social policies and programs being made to eliminate violence.

Impact of violence on children

A strong link is reported between violence and its adverse impact on the physical and mental health of children (Kumar et al., 2005). Children in violent homes may not get the care they need. A mother who is being abused may be in too much pain to take care of the child. Also, children who routinely witnessed or are present when violence takes place get harmed (O'Conner, 1995) and are at a higher risk for a range of emotional and behavioral problems (Jaffe et al., 1990). Emotional effects of witnessing violence are similar to the psychological trauma of being a victim of child abuse and have detrimental effects on the development of a child's brain. Living with scary noises, yelling, shouting, and hitting may make a child feel helpless, scared, and upset. Children may grow feeling guilty and assume that it is their fault. Children who witnessed violence suffer lasting psychological damages and a range of problems such as increased anxiety, trouble in sleeping, depression (Edleson, 1999), trauma, temperamental problems, problem in getting along with others, low self-esteem, nightmares, and physical complaints (McCloskey et al., 1995). Those who grow up in a violent home may exhibit cognitive difficulties, poor educational performance, and delinquency. Children who witness violence are likely to engage in health-harming behaviors such as smoking, alcohol and drug abuse, and unsafe sex, with lifelong health consequences.

Domestic violence is a human rights issue

No women will be free until all women are equal.

(MacKinnon, 2006a, p. 13)

Generally, human rights violations are seen as actions perpetrated by the state. It is somehow wrongly being assumed that the governmental actions and the liberal principles are applied to the public world and not in the private realm; therefore, when a crime is committed inside the four walls of the house, the human rights principles are not made applicable (Romany, 1994). The state-centric view of the human rights approach disseminates the notion that domestic violence is a private affair and therefore could not be touched (Richards and Haglund, 2015). Such notions fail to appreciate the

fact that women historically have been relegated to the private sphere and therefore their social or political participation in the public space is negative.

However, the issue of violence against women has been raised at the World Plan of Action adopted at the 1975 UN World conference in Mexico. It drew attention to the ways to resolve family conflicts in a manner that ensures dignity and security to each family member. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN General Assembly in 1979, where the states are required to take legislative measures to address the issue of violence. The World Conference of the UN Decade for Women held at Copenhagen in 1980 adopted a specific resolution against violence in the family. In Nairobi in 1985, the issue of gender-based violence was perceived as a hindrance to attain the goal of human rights and peace. It is raised that violence is 'directed against a woman because she is a woman' and that it affects women disproportionately, which implies that men and women do not face the similar risk of experiencing violence (Bunch, 1990).

The Sixth UN Congress on the Prevention of Crime and the Treatment of Offenders adopted a resolution on domestic violence that was endorsed by the General Assembly in 1985 and called for research to be conducted from the criminological perspective on the development of the strategies. The Expert Group Meeting on Violence in Families with special emphasis of its effects on women was held in Vienna in December 1986. In 1990, on the recommendation of the Eighth Congress, the General Assembly adopted Resolution 45/114 that urged the Member States to develop and implement policies within and outside the criminal justice system as a response to the issue. In 1991, the Commission on the Status of Women recommended the development of an international instrument, and the following year the CEDAW treaty committee issued General Recommendation 19, which recognized gender-based violence as a form of discrimination and identified a range of measures to eradicate it (Joachim, 1999). In 1993, the UN General Assembly unanimously adopted the Declaration on the Elimination of Violence against Women. The declaration elaborated that

Violence against women is a manifestation of historically negligent poor relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women and that violence against women is one of the crucial social mechanisms by which women are forced into subordinate position compared with men.

Article 14 of the declaration cast duty upon the state to pursue a policy of eliminating violence against women and to develop penal, civil, labor, and administrative sanction and domestic legislation to punish and redress wrongs caused to women.

The UN Resource Manual (United Nations, 1993) while preparing the policy document identified different strategies to deal with the violence in homes. In 1994, the establishment of the 'Special Rapporteur on Violence against Women' established four key focus areas, one of which was domestic violence and which has also been reiterated by the Vienna Accord. At the UN's Fourth World Conference on Women in Beijing in 1995, 180 governments agreed that violence against women (VAW) is a critical issue (Weldon and Htun, 2013). In 1996, the UN Special Rapporteur on VAW recommended 'A Framework for Model Legislation on Domestic Violence'. This framework provides guidelines and calls on countries to comply with the international standards (Coomaraswamy, 1996). Since then, this framework has acted as a guiding source to demand and develop the legislation in numerous countries (UN Women, 2013). It contains essential components such as the purpose, definitions, complaints mechanisms, duties of judicial officers, criminal and civil proceedings, and provision of various services. The framework called for speedy remedies and effective enforcement of laws that provide relief and prevent further abuse.

In 2004, the UN General Assembly in its Resolution 58/147 titled 'Elimination of Domestic Violence Against Women' recognized that domestic violence is one of the most common and least visible forms of violence. It requires states to take serious action to protect victims and prevent abuse. On 11 May 2011, the Council of Europe adopted the Istanbul Convention, which came into force on 1 August 2014. The Istanbul Convention is the first legally binding instrument that 'creates a comprehensive legal framework and approach to combat violence against women'. It is focused on preventing violence, protecting victims, ending impunity, and prosecuting the offenders.

International agreements have been regarded as tools to shape the response of the nation states, and therefore these treaties could be utilized to advocate, define, and monitor the domestic policies and laws. The state's obligations to respect, protect, fulfill, and promote human rights with regard to VAW encompasses the responsibility to prevent, investigate, and prosecute all forms of violence. Keeping this in mind, many countries have enacted laws to deal with the issue. However, each country has set its own mechanisms and the outcomes are different based on various factors.

It is worth mentioning here that in the international human rights context, the term 'domestic' has been used as a shield by governments to disallow any scrutiny or review of the allegations of violence against it. Under the garb of resolving internal conflicts, human rights violation is often perpetrated by the states. 'Domestic' protects a nationalist agenda and promotes regressive and oppressive ideology. It signifies the locus of preservation of power and oppressive traditions. Such practices shield violence in private spaces from common scrutiny while using the defense of 'domestic' or 'internal' to avoid any political or legal implications of unjustified actions.

Domestic violence laws and family privacy: A global debate

One of the common perceptions is that the right to family privacy is significant; critiques, therefore, have opposed the intervention of criminal and civil law within the domain of the family. John Locke and other theorists have argued that to maximize one's autonomy and self-fulfillment, the state should limit the regulation of the private sphere, which included matters relating to family. However, feminists have argued that this public-private dichotomy is harmful (Pateman, 1983). The rights of the individuals are kept at abeyance whereas the family as a unit is prioritized. Kannabiran (2005) suggests that deconstructing the normalization of violence becomes possible only by situating it within the framework of rights.

While addressing situations of individual rights versus family rights, it has been clarified that every individual within the family has the right to lead a violence-free life. Efforts are being made to promote the democratic family norms and to protect the rights of every individual member equally. The 'Year of the Family' observed by the UN in 1994 proclaimed 'Building the Smallest Democracy at the Heart of Society', which seeks 'to bring about a fuller sharing of domestic responsibilities and employment opportunities'. In fact, it is well-settled law that the 'right to private family life does not include the right to abuse family members'.

In many jurisdictions, domestic violence is treated as a serious crime. The purpose of criminalization is to make the accused accountable for his crime and to protect the victim irrespective of her relationship with the perpetrator. Criminalizing domestic abuse indicates that it is as serious as the crime on the street against the strangers and that the abusive conduct is unlawful and needs to be condemned. Arrest, prosecution, and conviction may have profound effects on the behavior of the offender, thus leading to a positive impact on the management of violence. Law plays an educative and a symbolic role. It codifies the fact that women are entitled to live a violence-free life. Scholars have observed that the women who live in countries that have domestic violence laws have 7 percent lower odds of experiencing violence in comparison to women living in the countries where there are no such laws (Klugman et al., 2014). It is suggested that the more effective the government's response is to the situation of domestic violence such as efficient policies machinery, presence of strong autonomous women's movements, trade unions, and other groups that exist outside the formal political parties, the lesser the violence (Htun and Weldon, 2012).

Domestic violence laws in India

The Constitution of India is premised on the value of equality and justice; however, in postcolonial India, the report titled 'Towards Equality' (1975)

acknowledged the failure of the state's policies to eradicate inequalities faced by women in areas of health, education, property, employment, and shelter. It created awareness about the abysmal situation of women. Yet the laws in India have hardly paid attention to the issue of violence despite the fact that women faced violence within the homes (Forbes, 1996). It is only during the late 1970s when women's groups took to the streets to protest against dowry-related murders. After the murder of 21-year-old Shashibala in 1979 within a year of her marriage, 'dowry violence' became a metaphor for describing cases of deaths of young women in their matrimonial homes. Street plays such as '*Om Swaha*' was used to raise awareness. Protests were held around shaming the families who demanded dowry, raising consciousness and insisting that the police take strict action. Many organizations initiated a public campaign and focused on public meetings, rallies, demonstrations, and *dharnas* while also lobbying with the Members of Parliament (MPs) (Palriwala, 2010). A private member bill was introduced to amend the Dowry Prohibition Act, 1961 and the matter was subsequently referred to a Joint Select Committee (JSC) of both the Houses of Parliament. By August 1982, the JSC presented its report to the Lok Sabha. The committee identified several deficiencies such as the narrow definition of dowry, procedural lapses in filing cases, and lack of deterrent punishment. The notorious murder of Sudha Goel (*State v Lakshman Kumar*, 1986) became a further point to rally when the High Court overturned the conviction of the accused persons (Jethmalani and Dey, 1995).

The state responded only after much persistence and the Criminal Law (Second) Amendment Bill was introduced as a package of measures to curb domestic violence. The then-Minister of Home Affairs Venkatasubbaiah introduced the bill to 'cover cases of cruelty on account of dowry or otherwise' in recognition of the ineffectiveness of the Dowry Prohibition Act, 1961. During the debates, some MPs argued that the legal provisions were inadequate. Others opposed it on the notions of the sacredness attached to the family. Some got worried because they perceived that 'women are challenging the domestic hierarchy'. While others demonstrated acceptance of feminist views, the rest treated the issue with pity (Lok Sabha Debates, 1983). In many such positions, violence is trivialized and normalized. Existence of women apart from the marital tie is considered an anomaly (Gangoli, 2007). What is stressed in the debate is that women belong to their families and communities but not to their own person. This positioned women as wives and mothers and not as independent citizens with the right to autonomy. These legal measures did not go beyond what the analysts calls the 'typecasting women as wombs to bring forth babies, lips to utter sweet nothings, and laps to cuddle infants'. (Mahanta, 1994)

Nonetheless, a consensus finally emerged and the Criminal Law (Second) Amendment Act, 1983 introduced Section 498A and Section 304B

and added stringent punishments under Section 306 IPC. These provisions criminalized domestic violence, dowry deaths, and abetment to suicide. Section 113(A) was introduced in the Indian Evidence Act, which states that if a woman commits suicide within seven years of marriage, and there was an evidence of cruelty prior to her death, her husband and in-laws would be held responsible for her murder unless evidence to the contrary is provided. Also, amendments were made in the Code of Criminal Procedure directing postmortem and inquiry in the cases of unnatural deaths of women within seven years of marriage to determine the cause of death.

Of these amendments, Section 498A is the only criminal provision that specifically addresses the situation of cruelty against a married woman within her matrimonial house. This provision is preventive in nature as it can be invoked before a woman dies and therefore acts as a deterrent to the dowry deaths (Jaising, 2014a). Section 498A states,

498A. Husband or relative of husband of a woman subjecting her to cruelty—Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation—For the purpose of this section, ‘cruelty’ means—

- (a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or
- (b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

Section 498A made cruelty against married woman a cognizable, noncompoundable, and non-bailable offense. This provision clearly introduced an element of deterrence. It categorized the offense as 1) physical as well as mental cruelty, 2) cruelty that drives a woman to commit suicide, 3) harassment for money or property, 4) potential perpetrators are husband or in-laws, and 5) people other than victim may file a complaint. It established the fact that criminal assault on a woman is in no way a private matter and condemns violence within the intimate sphere. Section 498A establishes the accountability of the state and puts onus on the police and judiciary to protect women against cruelty in homes. However, decades later, since this law came into existence, its provisions have not facilitated gender justice.

To register a complaint under 498A, a woman is expected to prove that she has suffered cruelty to such a severe extent that she has been driven to contemplate suicide or that her life has been in danger (Jaising, 2009). The routine violence women face every day is ignored. Physical violence is not an isolated event. It involves a series of daily assaults. The cumulative forms of violence in between the episodes of 'cruelty' when women experience control, threat, intimidation, fear, coercion, or abuse as slapping, punching, and kicks are not taken into account while interpreting the law. These 'trivial incidents' constitute the larger pattern of violence that harms women in the long run. Instead, the law sees specific episodes of violent acts in isolation. Furthermore, it is left to the interpretation and discretion of the police to assess if the particular form of abuse faced by women at the hands of her husband qualifies as 'cruelty' under the law. Thus, even when an accused commits multiple offense, punishment remains nonexistent. Besides, the law has failed to address the issue of children harmed within families because of exposure to violence. Further, the scope of violence is limited as it does not address other forms of violence inflicted by fathers, brothers, uncles, fathers-in-law, brothers-in-law, or the larger kinship network.

Also, the police, lawyers, and other stakeholders somehow portray a strong connection between dowry and domestic violence and therefore when a survivor approaches them, they often end up advising her to add a dowry component to the complaint so that the 'case could become strong'. Menon (1998) argued that fighting dowry through criminal law is a misplaced strategy. She opined that a major lacuna is that the women's movement has focused on legal reforms despite the known fact that the law in no way ensures gender justice. Gandhi and Shah (1992) noted that 'every campaign in the movement has demanded legal reform', while at the same time, the movement has severely criticized

the legal system, the hopelessness of achieving legal redress and the endless squabble with the lawmakers and implementers.

(p. 267)

Agnes noted that perhaps the blame lies with the movement that gave more importance to dowry-related violence while undermining domestic abuse. She stated

it was easier to focus on 'dowry' as an external element and project the mother-in-law as the main culprit, than address the issue of sexual control, lack of property rights in the natal home and stigma of divorce.

(Agnes and D'Mello, 2015, p. 77)

Also, demanding a new law is an easy option than challenging the patriarchal structure. Moreover, violence is viewed as a result of difficulties in marital adjustment rather as systemic subordination of women. Focus is laid on reconciliation and compromise. Interventions are sought in domain outside the criminal law to exacerbate adjustment difficulties rather than using law to counterbalance domination by men as husbands. What is wrongly prioritized is the idea of saving the family rather than being concerned about safety of women and children in a violent home.

However, others have argued that the anti-dowry movement has played a great role in bringing the issue of violence in the public fora and condemning it and therefore has reshaped the discourse relating to domestic violence (Kapur and Cossman, 1996). Several scholars suggested that the major hurdle was the 'Indian family and its traditions' that had been cast as bedrock of the social fabric by the government, 'representatives' of society, the judiciary, and the academics. The spread of dowry is seen as a degeneration of moral and familial values. Demands made by the movement had been thwarted in the name of 'custom', 'family', or 'religion'. Some scholars suggested that the movement had to find ways to negotiate within two separate domains—the state and the community, which are interlinked in complicated ways and therefore articulation of many issues became challenging (Ghosh, 2004).

Linking dowry with domestic violence: A serious manipulation of law by the state

Dowry is a hegemonic, upper caste, Brahmanical practice that replaced the custom of 'bride price' with giving of gifts by the parents and relatives of bride at the time of marriage (Srinivas, 1984). Dowry has become pervasive with the *sanskritization* and the emergence of consumerist culture in a feudal society. In fact, dowry has continued to grow as a compulsive, coercive, nonvoluntary and oppressive practice in postcolonial India (AIDWA, 2003) to an extent that today it has become a burden (Palriwala, 2009). Moreover, the law draws a distinction between dowry and *stridhan*; thus, partly it justifies dowry. Accordingly, the dowry given to a daughter for her use is legal but when a coercive demand is made by in-laws, it is treated as a pernicious 'social' evil and not a 'legal crime' despite its strong linkages with dowry deaths, murders, suicide by women, and torture of brides for extorting money and valuables. The law, in fact, sees dowry and domestic violence as social evils rather than as crimes that need to be punished.

Basu (2009) argued that dowry as a system flourished because both giver and taker are penalized. According to her, little has been done to address the social mechanism in which dowry thrives. Other scholars argue that dowry boycott is futile as it is the only way a daughter could get her share in

the parental property (Kishwar, 1988). However, this argument instead of pushing the inheritance right of a daughter to claim her share in the parental property, mistakenly wrapped it in the vice of dowry. Palriwala (1989) suggested that this view sees daughters as burdens, thus denying them their economic rights. In fact, a few organizations have drawn a link between dowry and sex selective abortions as well as other forms of discrimination and subordination, including son preference, indebtedness among poor families, and devaluation of women (AIDWA, 2003). Furthermore, Karat (2005) stated that the women's movement could not transform the structures of gendered inequality in which dowry is embedded without a larger sociopolitical movement that could address a range of socioeconomic inequalities. However, despite a range of recommendations made to eradicate dowry, the state did little to emancipate the women's situation thereby strengthening the dowry web. The inaction on the part of the state to alleviate the status of women further deepened the crisis.

Section 498A IPC: Tribulations and further actions

Experiences show that the provisions of 498A are not interpreted in a manner as to help women; rather, the complainants are made to run around within the courts and the police stations to claim maintenance or to retrieve their *stridhan*. Once a complaint is filed under 498A, a survivor is left with no material support and is frequently dispossessed of her matrimonial house. Moreover, to pressurize a woman to withdraw her complaint and to counter the legal proceedings, her husband often would file multiple suits for divorce, restitution of conjugal rights, custody, or similar such provisions. The multiplicity of litigation adds to the complications, and complainants found themselves running from pillar to post (Nigam, 2005). The nonsupportive approach of the state clubbed with the difficulties within the legal system adds to the women's woes.

To remedy such complexities, further demands were made to establish a less informal mechanism and therefore the Family Courts Act was enacted in 1984. The purpose of establishing the family courts is to provide informal apparatus for 'speedy settlement of matrimonial disputes' and to provide remedies relating to maintenance, custody, and divorce, all under one roof. Emphasis is laid on inexpensive and non-adversarial method of resolving 'family disputes'. In other word, these courts are 'family centric' rather than 'victim or survivor centric'. The act focuses on 'preservation of family' or 'brokering compromises' instead of eliminating violence. Therefore, whenever a complaint is filed, it becomes mandatory for the women to undergo counseling that enforces a coercive persuasion and compels the complainant to adjust and compromise with the violence. This counseling does not the deal with the required psychosocial support or emotional healing. What is strengthened is the belief that women prefer to go back to the violent homes

without any sense of protection. Bringing material support, medical aid, child care services, short stay or shelter facilities, financial support, legal aid, women's safety net, or a sensitive machinery under a roof was not anticipated as a solution to provide relief to the victims, despite the knowledge that this comprehensive package is essential to support the battered women. The only support provided through the family court is counseling and more counseling to push women back to the violent situation, to 'adjust', 'compromise', and 'save the marriage', even if it endangers their life and limb because no options could be imagined outside the 'sacrosanct' family. Perhaps, it is a much easier and economical option to push women back to the violent situation. Another choice offered is 'settlement' in which a victim is left with no other alternative but to fend for herself and her children in lieu of a meager amount of money, if any, offered by the batterers or probably stay at her natal home or *maika* or may remarry. Experiences indicate that these so-called women-friendly adjudication spaces failed to address the concerns of the battered women (NCW Report, 1992). Studies have shown that the family courts were not free from difficulties such as backlog, exploitative approach of lawyers, long-drawn battles, multiple proceedings, and the insensitive approach of officials.

Further, despite the knowledge that victims of violence find it difficult to walk out of an abusive relationship because they are dependent on their husbands and have no place to live, no efforts have been made by the state to materially emancipate the situation of the survivors. Though a few organizations initiated shelter services, their numbers have been far and few. Also, they are dependent on the state for funding and are 'suspected by women in the middle-class localities' (Gangoli and Rew, 2011); besides, there are concerns for personal safety that forced them to control women's mobility (Gangoli, 2007). Others contended with providing legal aid, developing community support network, or providing skill-based training. A few associated themselves with the law enforcement to ease the access to justice while others negotiated with the husband and his family on behalf of the woman (FAOW, 1990). Tragically, the initiative to provide economic opportunities or other support facilities for victims has not appeared on the list of issues taken up by the 'welfare' state. It is a well-known fact that the deeply entrenched capitalist patriarchy can only be challenged through creating conditions for women's liberation in the economic and material terms, yet no strategies have been devised for the same. Many women have entered the workforce lately, yet countless remain socially, financially, and morally dependent on age-old traditions and customs while the domestic abuse continues unabated.

How 498A failed the battered women

The experience of decades with 498A reveals that though the law provides an open strategic platform where a woman facing violence within

marital home can raise her concerns, it is limited in its implementation and has neither been able to provide steady solutions to end abuse nor deter violence. Law, in fact, has acted to dis-empower the victims because it introduced the concept of mediation while linking it to the question of women's survival. Section 498A has been twisted and molded the criminal procedures to create the counseling centers. However, such reshaping could not address the concerns of the victims. In fact, efficacy of law is drastically reduced as it fails to bring any major social transformation in shaping the concept of equity or partnership within the marriage. In fact, it is said that created as a response to women's movement agitation against dowry deaths, sieved halfheartedly through legislative debates, erroneously interpreted and twisted by judiciary, speciously shaped and crafted by executive, battered by the well-lobbied men's movement, and contested fiercely by the zealous media, 498A has been applied in unanticipated and unforeseen ways and has been transformed in the process (Basu, 2015a).

Initially, the lawyers and the women's groups used 498A as a tool to bargain for women's economic rights vis-à-vis the batterers, thus creating a new legal culture. For instance, when a battered wife files a complaint, the abusive husband is called upon and the counselor or the police negotiate on behalf of the woman. As the victim has no other means to support herself, she is either sent back to the violent situation with no legal guarantee that she will not be abused again or the case is 'settled' if she stays in her *maika* with little or no recompense. The case is sent to trial only after the negotiations fail and it is then that the police help her in the retrieval of her *stridhan*. For obtaining maintenance from her batterer or to obtain separation of divorce, applications have to be filed accordingly either under Section 125 CrPC or the civil and the personal laws. No punitive action is taken against the abusive husband or in-laws in cases in which a woman chooses to go back to her matrimonial house. Also, it is easier to get bail in these cases. Once the accused is out of jail, the trial continues for years. Punishment to the guilty is rarely inflicted.

Instead of seeing wife battering as a crime against women's body, integrity, or dignity, 498A is implemented ambiguously. 498A is used to provide customized solutions to the conventional problem and in the process, protects abusive husbands while offering no remedy to the battered wife. Rather than empowering women as agents to control their lives and to assert their agency, the law took away the privileges complainants have in the criminal justice system. Also, most of the implementers in their role as 'protectors' use laws to their own end by enforcing more control on women's lives. The law, thence, proves to be a 'subversive site' where competing visions and ideologies relating to family, traditions, and culture are brought to filter women's claims (Kapur and Cossman, 1996). In fact, the law sees women's averment enmeshed within patriarchal familial network, while recognizing

them as wives and therefore lesser citizens. Agnihotri and Mazumdar (1995) noted a sense of defeat in the women's movement with regard to the agitation initiated in the 1980s as it ended up in perpetuating a 'women as victims syndrome'.

Moreover, besides the hurdles in implementation of law, the problems magnified because the legal reforms were not accompanied by socio-economic or political actions (Ganguli, 2003). The state has neither shown keenness to transform the situation nor has implemented the comprehensive measures to liberate women. Rather, the state chose to focus on the groups who vociferously argued against the law. Without substantiating their averments through the fact finding, or exploring the ground realities, the state is obsessed to dilute the law. Slyly, the state has created conditions whereby the law has lost its efficacy and deterrent effect. Though the state is duty bound to lessen the crime, it is treating the domestic violence as a lesser crime and wives as lesser citizens. By paying no attention to its legal obligations to redress women's powerlessness and by protecting the abusers by not prosecuting them, the state is reiterating injustice. Also, the debate within the women's movement that focuses on the critical aspects of why the law has not worked has raised questions such as the relevance of masculine state-centric law to the women's rights per se, women's access to justice, or legal reforms, yet in all such debates, battered women have been excluded from the ambit of discussions. The training and sensitization of police and judiciary is yet another arena to be taken up.

PWDVA and civil remedies

The PWDVA was enacted in 2005 after a long-sustained campaign. It provides for civil remedies and protective injunctions like Protection Orders, Custody Orders, Maintenance Orders, Residence Orders, Compensation Orders, and so on, besides expanding the definition of domestic violence and broadening the scope of the law (Nigam, 2008). Based on a convergence model, the PWDVA with its lofty aspirations provides for expeditious remedies and is located within magistrate courts with the criminal consequences for violation of orders. The law introduced the contingent consisting of protection officers and services providers to provide sensitive gender-friendly services while minimizing the role of police. While presenting the bill before the Lok Sabha, the then-Minister of State for Human Resource Development on 23 August 2005 stated that

Presently lakhs of women in the country are subject to domestic violence. Various kinds of violence like gender discrimination, domestic violence, dowry related violence and sexual exploitation of women are rampant all over the country. The reason behind this trend is the discriminatory approach of the society towards women.

This phenomenon is not confined to a particular caste, religion or community, rather it is pervading in every section of the society.

Yet again, the law in no way addresses 'the situation of discriminatory approach of the society towards women'. The solutions are sought within the limited domain of violent marriage and the unsafe family structure. No viable long-term social or economic alternatives are being offered to the battered women by the state. Little is imagined outside the patriarchal setup in which a survivor could explore options beyond the domain of *maika* or *sasural*. Implementing the safety plans, creating shelter homes, providing medical aid, and similar other provisions are not being followed. Moreover, today, the hostility toward a women-friendly approach is depicted by many stakeholders who erroneously opine that the law is misused, and this is perilous. Several provisions such as those relating to arrest, bail, and applicability of the law, among others have been diluted and currently, the law offers little protection to women. Perhaps, the focus is laid on excessive law rather than addressing the problematic social structure that is oppressive is creating a havoc. It is therefore, suggested that the framework of rights in the marriage needs to expand with the changing socioeconomic realities. Legal entitlements cannot be translated into reality unless these are situated in the altering social context.

In short, it may be said that domestic abuse affects a woman's health and impedes her meaningful contribution as a citizen. Violence harms families and communities in the long run. It drains the resources and lowers the overall educational attainment, mobility, and innovative potential of the victims. Thus, the longer the issue is dismissed as a private matter, the bigger will be the damage done to the economy. At the global level, domestic violence has been recognized as a human rights issue; many countries have criminalized it and are enforcing the mandatory arrest policies besides providing the rehabilitation measures. However, in India, though domestic violence has been criminalized theoretically, in practice, the law is twisted and molded to cater to the whims of patriarchy. Family ideology is being imposed while implementing the law instead of applying the constitutional values. Heavy reliance placed by the women's movement on the law has not helped. The law is being implemented in a way that it re-victimizes the victims.

THE BACKLASH AGAINST DOMESTIC VIOLENCE LAW

The truth is that the last decade has seen a powerful counterassault on women's rights, a backlash, an attempt to retract the handful of small and hard-won victories the feminist movement did manage to win for women.

(Faludi, 1991, pp. 9–10)

This chapter examines how the myths and misogyny operate within and outside the courtrooms. While analyzing the verdicts pronounced by the courts, the advisories issued by the ministries, the reports by the Law Commission, and other documents, it elucidates that consistent efforts have been made over the years to dilute the provisions of the domestic violence law. Due to this consistent, continuous, and erroneous backlash, the domestic violence crime is accorded low priority and wives complaining about violence are being considered lesser citizens. The courts are rather penalizing the complainants, and, in the process, are ignoring the important legal dimensions of the sensitive and serious crime. In fact, it may be said that the domestic violence law remains underused or, in other words, the law formulated to protect abused women is currently being utilized to protect the privileges of those who hold power within the families, communities, and society.

Misogyny at the societal level

A news clip that appeared on 26 September 2019 reads, 'Men's rights group in Bengaluru holds "*pisachinimukti puja*" (prayer-rituals to get rid of the female devil) to end feminism and #MeToo' (Dash, 2019). It described that a men's group known as 'Save the Indian Family' conducted the '*pindadaan*' (a ritual performed after the death of a person for the salvation of the departed soul) of feminism as they consider the MeToo movement a 'digital mob lynching tool'. This group considers itself as a crusader of the Indian family; their aim, as claimed, is to fight "legal terrorism" because of the misuse of women's protection laws (The Hindustan Times, 2018). Instead of

ending the toxic masculinity, these men did the opposite. What is ignored is the fact that in the society where the sex ratio is skewed and the incidences of violence against women are increasing, it is important to eliminate the structural discrimination.

All over the world, violence against women is condemned. Efforts are being made to condemn ‘intimate terrorism’ as the ‘society is no longer colluding with the batterers’ (Dunlap, 2016, p. 776). Yet in South Asia, the patriarchal society is refusing to alter its attitudes. Though the laws are being enacted to curb violence, enforcement remains a major concern. The common belief that is wrongly being entrenched is that the laws are being misused by women. Ironically, these opinions are not based on in-depth investigation, or the application of mind. These ill-informed claims arise from patriarchal anxiety—what I called a ‘*misogynist filter*’ that sees the demand to end structural oppression as a challenge to the male hegemony. Insecurities arise because of the fear of relocation of the locus of control, as the law apparently empowers women, enabling them to negotiate their claims. Those who are enjoying the privileges for ages fear that empowering the vulnerable would threaten their entitlements, and therefore they launched an attack on the laws. Seemingly, a group of ‘disgruntled’ men who wanted to evade arrest and punishment have launched an influential propaganda about the ‘injustice’ they suffered and ordinary people, lawyers, judges, and the executives joined them gradually (Nigam, 2017). When several other laws are being misused, men’s groups select the domestic violence law as this affects them the most (Rajalakshmi, 2008). For instance, the NCRB report 2019 shows that around 125 cases of custodial death have been reported across the country, yet no voices have been raised for demanding changes in the rules relating to custodial treatment of the prisoners. This flawed selective approach is also being utilized by the state that is blindly working against the women-friendly laws.

This misogynist attitude is not only prevalent in India but in Pakistan too, where on the International Women’s Day in March 2019, when women organized a march to highlight the issues relating to violence, a group of men ridiculed them (Youth ki Awaaz, 2019) and organized the ‘*mard* or men’s march’ in retaliation. They used humiliating sexist slogans and placards to mock women. Some of those read, ‘*dick pics behjna mera right hai*’ (It is my right to send the dick pics), ‘*Ladies first, Gents first kab ayega?*’ (All about ladies first, when will we say Gents first?), and many such slogans reveal deep-rooted patriarchal insensitivity and ignore the systematic oppression women suffer. The next year, on 8 March 2020, the women organized the ‘*Aurat March*’ under the banner ‘*Mera Zism, Meri Marzi*’ (My body, my choice), a group of men again attacked the procession and injured many protestors (Ahmed, 2020). In Iran, a lawyer Nasrin Sotoudeh who has dedicated her life to defend the right for removing hijabs in public has been sentenced to 38 years’ imprisonment and 148 lashes by the theocratic state

represented by the clergy in a secret trial in 2019. Tragically, in Bangladesh, too, the misogyny resulted in the killing of Nusrat Jahan Rafi, a 19-year-old who was doused with kerosene and set on fire less than two weeks after she filed a case against her headmaster for sexually harassing her (Sabbir, 2019).

During the recent years, an increase in hostility against women in the virtual world is being observed where men are trolling women online as the latter express their views (Chaturvedi, 2016). Hate and toxicity seemingly appear to be rising along with the deepening of conservative values where hyper-masculinity is glorified and qualities such as valuing human beings are denigrated. Media, too, is propagating the chauvinist campaign to propagate negative images of women. At the larger level, the sexist approach is used not only to oppose the women-friendly laws but also to undermine the women's empowerment policies and programs such as the Women's Reservation Bill, because it is believed that once women are emancipated, the oppressive system built over the generations will stumble as those in command will lose their authority. Perhaps, resentment is occurring because the self-centered uneasiness has stirred the fragile masculinity.

Therefore, in South Asia, the women's movement has emerged as a response to address the embedded patriarchal situation that is discriminating, torturing, and killing women for ages. The challenge revolves around the basic aspects of women's survival with dignity. Patriarchy, in such cultures, valorize masculinity. Dehumanization of women through institutions such as the law, media, market, or religion results in situations in which women are portrayed as less trustworthy and less reasonable compared to men (Dhanda and Prashar, 1999).

Way back in 1991, Faludi, in the context of the USA, observed that the backlash is not an organized movement, yet it is powerful and destructive. However, over the period, the backlash has organized itself—globally as well as locally. Today, worldwide, the men's groups are minimalizing and denying violence against women, asserting that men face difficulties with the legal system and complained of biased decisions in the custody disputes (Messner, 1998; Dragiewicz, 2008). In the Global North, the idea that is being encouraged is that only white men are fully human and therefore society is organized around their needs. This assumption is being criticized by feminist scholars (Okun, 1979; Kuiper and Sap, 1995). Many have suggested that legal response should be guided by an understanding of the way the concept of masculinities fosters inequalities (Clatterbaugh, 1996). Johnson (2014) argued that though men dominate, they fear that women may rebel and retaliate, and this fear fosters misogyny. She explained that

when love and need are bound up with fear and envy, hate and resentment, the result is an exploitative mixture that can twist our sense of ourselves and one another beyond recognition.

(pp. 39–40)

In India, Basu (2015b) examined various blogs, memes, and posters and explained how the men's groups that began its activities around 1990s emerged as a well-organized movement. She profiled the MRAs' understanding of law and their varied subjectivities and anxieties that prompt them to castigate their wives and to attack the domestic violence laws. In particular, she focused on their counterattack on simultaneous deployment of the multiple laws (Basu, 2016). The developments, over a period, indicate that the backlash against women-friendly laws moved from the secret chambers to the corridors of power, while using the divide and conquer policy, creating binaries of 'good and bad' women, 'single and married' women, 'working women versus homemakers', and so on. The backlash manipulated the system of rewards and punishment, elevating women who follow patriarchy while penalizing those who refuse to conform. It redesigned the old myths, and in the process, ignores rationality and reasoning.

Myths and misogyny are hampering the implementation of law

Elsewhere, Ferraro (1996) has maintained that the crime control discourse undermines the critique of male dominance within households as it focuses on individual men. According to her, the legal discourse replicates hierarchies of power. Also, perhaps symbolically, the domestic violence law represents a shift in power balance. Even if the implementation of the law is flawed, it characteristically denotes the transfer of power. For women, the law implies empowerment, an escape from the situation of vulnerability, but men abhor it. Similarly, in India, the male supremacy guides the bureaucratic mindset.

The malicious propaganda of 'misuse' of the domestic violence law propagated by the MRAs is expanding to the extent that the police, judiciary, lawmakers, and the executives have started working actively on it. In fact, the courts, in several decisions, have suggested to dilute the provisions relating to arrest and punishment. Low conviction rate in such cases is cited as a proof of its misuse. Rather than looking at the difficulties in obtaining the conviction, the state agencies added fuel to the fire by propagating the baseless myths. For instance, the Malimath Committee Report (Government of India 2003), 20 years after the enactment of Section 498A noted,

A less tolerant impulsive woman may lodge an FIR even on a trivial act. The result is that the husband and his family may be immediately arrested and there may be a suspension or loss of job. The offence alleged being non-bailable, innocent persons languish in custody. There may be a claim for maintenance adding fuel to fire, if

the husband cannot pay. She may change her mind and get into the mood to forget and forgive. The husband may realize the mistakes committed and come forward to turn a new leaf for a loving and cordial relationship. The woman may like to seek reconciliation. But this may not be possible due to the legal obstacles. Even if she wishes to make amends by withdrawing the complaint, she cannot do so as the offence is non compoundable. The doors for returning to family life stand closed. She is thus left at the mercy of her natal family. . . . This section, therefore, helps neither the wife nor the husband. The offence being non-bailable and non-compoundable makes an innocent person undergo stigmatization and hardship. Heartless provisions that make the offence non-bailable and non-compoundable operate against reconciliations. It is therefore necessary to make this offence (a) bailable and (b) compoundable to give a chance to the spouses to come together.

(p. 191)

The committee while making such observations expressed its apprehensions in the ability of the criminal justice system to provide justice. However, the committee has failed to recognize that

- 1 Cruelty under 498A is listed as a cognizable, non-bailable and noncompoundable crime and has to be dealt with accordingly. The criminal justice system while dealing with each case is expected to take abundant precautions in ascertaining the guilt of the accused person; therefore to suggest that this offense be diluted implies distrusting the judiciary and labeling the trial courts as inefficient to effectively adjudicate the culpability of the parties.
- 2 The context of relationship between the perpetrator and the victim does not make domestic violence a lesser crime. Rather, the severity of the crime is adverse in situations in which the batterer can exert financial, emotional, and social control over the victim because of the relationship and the victim is financially dependent on the perpetrator.
- 3 Salvaging a violent marriage is not a viable option where a man is abusive as he destroys the family through his violent actions. Families cannot be built on the edifice of bruised and battered bodies or scarred minds.
- 4 The bitterness in the relationship already starts once a wife is being abused, therefore suggestions should have focused on altering the man's violent behavior.
- 5 The policemen are not overzealous to arrest the accused. Rather, studies have shown that women undergo hassles in filing the FIR. Also, at every step of the trial, mediation is enforced vehemently to compel women to reconcile.

- 6 Making the offense compoundable will not serve the purpose as neither this will deter the perpetrator nor will it help to salvage the relationship. Experience shows that violence escalates when women are pushed back in the abusive situations without the guarantee of safety.
- 7 The committee has failed to raise concerns relating to provisions of shelter homes, medical or legal aid, or other facilities for the battered women as its only interest was to save the family. This indicates its biased approach.

Despite its pitfalls, this erroneous approach sets precedents, is being repeated multiple times, and has major implications on diluting the procedures and provisions relating to the criminal law. Over the years, the state has followed the recommendations blindly without testing the validity of claims or referring to the existing research to suggest changes.

Might is right: When the courts negate the rule of law

Even prior to the recommendations made by the Malimath Committee Report, in several cases, the courts have made similar observations. In *Rajeev Verma v State of UP* (2004), the court has recommended making the offense under 498A compoundable. In *Sushil Kumar Sharma v Union of India* (2005), the court held that ‘by misuse of the provision, a new legal terrorism can be unleashed’. In *Ramgopal v State of MP* (2010), *BS Joshi v State of Haryana* (2003), *Manoj Sharma v State* (2008), *Madan Mohan Abbot v State of Punjab* (2008), and in many other cases, the courts have directed the police to take precautions while filing FIRs, making arrests, or granting bail. Serious complaints of violence are normalized and trivialized while dubbing these as ‘dispute’.

A plain reading of the text of the decisions shows that before making generalized assumptions regarding the misuse of laws, no efforts are made to call upon the records of public bodies or the ministries documenting the data on women’s issues. Domestic violence is a serious issue and requires a coordinated response from several departments such as the Health and Family Welfare, Women and Child Development, Social Justice and Empowerment, Law and Justice, among others. Yet no response is sought by the courts from these institutions. Subjective assertions guide the conduct of state actors because the law threatens the existing power equations. Also, there have been no attempts to look at the historical or social context in which this law has been made.

In *Lalita Kumari v State of UP* (2014), the Constitution bench has directed to conduct preliminary inquiry to ascertain whether the information reveals any cognizable offense. The bench put the “matrimonial disputes/family disputes” into the category where it is directed that preliminary inquiry be

conducted in such cases. Further, the division bench of the Supreme Court in the matter of *Arnesh Kumar v State of Bihar* (2014) noted that

The fact that Section 498 A is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by *disgruntled wives*. The simplest way to *harass is to get the husband and his relatives arrested* under this provision. In quite a number of cases, *bed-ridden grand-fathers and grand-mothers of the husbands, their sisters living abroad for decades are arrested*. ‘Crime in India 2012 Statistics’ published by National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for offence under Section 498A of the IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951 which depicts that mothers and sisters of the husbands were liberally included in their arrest net.

(Emphasis added)

The court further ordered

All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498 A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, CrPC; All police officers be provided with a check list. . . . Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court. . . . Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

Though it is a simple bail application, the ‘utterly sympathetic court could not stop itself from issuing detailed guideline to prevent unnecessary arrest and casual and mechanical detention’ (Jaising, 2014a). The court failed to realize that the rate of crime is increasing because women are raising their voices against violence and that the share of 6 percent arrest is not high as compared to the number of reported cases. The NCRB Report, 2014 indicates that the category ‘Other’ IPC crimes reported 38 percent arrests; 10.4 percent were arrested for rash driving, 6.8 percent for thefts, and 8 percent for riots. Thus, even for the crime of rash driving, thefts and riots invoke higher arrests than for those under 498A. These figures refute the allegations that the ‘innocent people are arrested under 498A’.

Conviction rate is low because most of the cases are forcefully compounded or 'settled'. Complainants are pressurized to withdraw the case using the pressurizing tactics. Also, the Court ignored the fact that the NFHS-3 data indicated that around 59 million women experienced violence and a mere 2 percent may have sought police support, which implies that more women have experienced violence who are not coming forward to register their complaint. In fact, women's organizations claim that,

In a socio-cultural milieu that encourages a culture of silence as far as women are concerned, where getting married and staying married are extolled values, and where marriage is perceived as providing security and social respect, the possibility of a large number of women faking and falsifying incidents of violence and harassment against them is not only remote but almost improbable.

(Jaising, 2014b, pp. 34–36)

The Court overlooked the fact that a discrepancy between the number of chargesheeted cases and convictions arose because of the apathetic approach of prosecution and the police. Further, under Section 41 CrPC, the reasons for warranting arrest are the same for all the offenses and include interfering with evidence, pressurizing the victim, and to prevent absconding. All these possibilities are more likely to occur in domestic violence cases in which the accused has more opportunities to do so compared to violence committed by a stranger.

The indifference of the apex court is reflected when it dismissed the curative petition filed by the NCW (*National Commission for Women v Arnesh Kumar and Others Curative Petition*, 2016) to reconsider the decision in the *Arnesh Kumar's* case on technical grounds. Hence, the ways are engineered to make it difficult for the tortured women to register their complaints. Through such decisions, the courts compel the women to remain silent while de-recognizing the historical background of the structural discrimination. The courts, thus, uphold the traditional values rather than safeguarding the spirit of the Constitution. While closing the eyes to the power imbalance within marriage, the courts are reiterating male domination. Instead of applying the rule of law, the courts have invented informal mechanisms to deal with the cases pertaining to women's abuse. Further, the phrase '*disgruntled women*' is used in many cases to mock the women with complaints against their abusive husbands.

For instance, in *Amarjit Kaur v Jaswinder Kaur* (2020), the Punjab and Haryana HC, while deciding a bail application, opined that

it has become a common practice to use the provisions of Section 498-A IPC as a weapon rather than shield by disgruntled wives.
(2020)

This statement is made without clarifying who ‘disgruntled wives’ are. The Court sees women through stereotypical lens and branded them as ‘vengeful’ and ‘liars’. The profound distrust in battered women’s narratives by the courts prevents them from seeing the problems women face in seeking access to justice. In a zeal to deal with frivolous cases, the courts strike at the roots of women’s rights.

In *Rajesh Sharma v State of UP* (2017), the Supreme Court passed a directive that no automatic arrests be made against the complaints lodged under 498A without ascertaining the veracity of the complaints. It directed to constitute the Family Welfare Committees in every district consisting of paralegal volunteers/social workers/retired persons/wives of working officers/other citizens who may scrutinize every complaint. The Court without examining the ground realities concluded that the law is misused by ‘vengeful’ women and see men as victims of this ‘cruel law’. The Court took an anti-woman stance where generous sympathy is poured for the husbands. No iota of compassion is shown toward wives who are being abused, abandoned, burned, murdered, and brutalized. Later, several women’s groups protested and signed the memorandum addressed to the Chief Justice of India (The Invisible Lawyer, 2018). These directions have been modified by a three-judge bench on 14 September 2018 in *Social Action Forum for Manav Adhikar v Union of India* (2018), where it ordered to do away with the formulation of committees while retaining provision relating to arrest and bail to the accused persons. Thus, the courts upheld the prerogative of husbands to chastise their wives and refused to apply the common law provisions in cases tried under 498A.

Additionally, by prioritizing the reconciliation over legal remedies, the Court propagated the idea that a woman should shy away from reporting violence because she is entrusted to protect the honor of her family. The courts have not conceded that the law plays a substantial role in reducing the rate of crimes. The courts refused to examine the data available on dowry death and women’s suicide; nor did they consider how the law is implemented through the available legal apparatus consisting of CAW Cells, counseling centers, or the family courts.

In *Mohammed Arif v State of UP* (1999) and in *Savitri Devi v Ramesh Chand* (2003), the Court has pointed out that there is a tendency to rope in the entire family of the husband in dowry harassment cases. Similar contentions have been raised in *Kans Raj v State of Punjab* (2005). It was observed that

A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.

This sentiment is further re-echoed in several other cases, such as *Preeti Gupta v State of Jharkhand* (2010), *Kailash Chandra Agarwal v State of UP* (2014), and *Shabnam Sheikh v State of Maharashtra* (2020). In *Ashutosh Parmar v State of MP* (2015), it is cautioned

Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations, unless there is tangible material to support allegations made against such distant relations.

Similarly, in *Bibi Parwana Khatoon v State of Bihar* (2017), the wife was burned alive by her husband and relatives and the trial court as well as the High Court found the husband, his brother, and brother's wife guilty under section 304B IPC, but on appeal the Supreme Court overturned the conviction while holding that the husband's brother and his wife do not reside in the place of mishap. Without examining the dynamics of the joint family system, the courts conclusively decided that those family members living separately should not be charged with the crime, even if they play a crucial role in inflicting the crime.

In *Avinash Chandrakant Deshmukh v State of Maharashtra* (2020), while deciding a bail application, the Bombay HC held that to prove cruelty, the act must be of such nature as were sufficient for a woman to lose her normal frame of mind. The courts could not see the fact that women who experience violence suffer from a range of problems. By protecting abusive men, the courts are violating the rule of law and acting as the vanguards of deeply embedded structural patriarchy. The broken bodies of abused women become invisible in the process. Years of pain and agony women undergo in an abusive marriage are ignored while making generalized statements.

Besides, the courts, as facilitators of justice, have failed to consider the impact of such statements at the ground level where the battered women are facing trouble in getting their complaints registered. Often, the traditional discourse based on the gender stereotypes dictate and influence the mainstream actions. Just as the *Khap panchayats* legitimize their actions by quoting traditions, customs, or antecedents, similarly, the courts in domestic violence cases are justifying decisions on the basis of the hearsay opinions and ill-informed claims. Legal procedures are manipulated to adopt the informal procedures to deal with the cases of violence while making a mockery of the law.

Excessive sympathy of the courts toward violent men is also evident in the matter of *Madras Christian College sexual harassment case*, where on 13 August 2019, the Madras HC remarked that women protection laws are prone to misuse and should be amended to safeguard the interest of 'innocent masculinity' (Emmanuel, 2019). Later these comments were withdrawn after 64 lawyers wrote letter to the Chief Justice on 21 August 2019 alleging that this critical observation amounts to transgression of judicial

discipline that would set an alarming precedent. The court, hence, protected the rights of the accused while ignoring the trauma women undergo or the torture children face who are compelled to witness brutal violence.

In *Narinder Singh v State of Punjab* (2014), the Court explained that in serious offenses such as rape, murder, or dacoity, amicable settlement between parties cannot be legally sanctioned, yet domestic violence is considered a lesser crime and it has been held that these cases can be compounded. Without drawing a distinction between grave violence and disputes, the courts ordered to compound the matters. The traditional approach of marrying the rapist is yet another ground that is being used to let off the accused persons by the courts in several cases (Babu, 2020), and in many cases violent men who rape women on false promise to marry are being let off by the courts (Khan, 2020). This *marry-the-rapist rule* has recently created a controversy where the Chief Justice of India was compelled to clarify that his comments during the proceedings were misreported after the outrage (News18, 2021). Further, in *Rakesh B v State of Karnataka* (2020), Justice Krishna Dixit observed,

the explanation offered by the complainant that after perpetration of the act she was tired and fell asleep, is unbecoming of an Indian woman; that is not the way our women react when they are ravished.
(para 2c)

The said observation though stands deleted later after the response of the civil society, yet it reflects the deeply embedded misogyny where the guardians of the law set standards informed by the outdated Victorian mindset. To the judicial mind, rape is rarely associated with the violation of the sexual autonomy of a woman; rather, an Indian woman is seen as an embodiment of honor, and therefore, the courts end up blaming the woman. Misogyny is reflected when the Indore Bench of Madhya Pradesh HC while granting the bail to the accused charged with molesting a woman, asked the abuser to get *rakhi* tied by the complainant on the day of *Raksha Bandhan* (Dwary and Chowdhury, 2020). Sadly, the courts imagined that forcing molesters to act as ‘protectors’ may change the dynamics of abuse of power by violent men. It is in *Aparna Bhat v State of Madhya Pradesh*, on 18 March 2021 that the Supreme Court has issued the directions that the judges should resist making misogynist statements in the courts while handling cases of sexual crimes against women, the cases of domestic violence still remained untouched.

Forcefully compounding the noncompoundable offenses

Not only the courts but the Law Commission consistently in its 154th Report (1996), 237th Report (2011), and 243rd Report (2012) has suggested that

domestic violence law be made compoundable. The commission though observed that

The fact that s.498A deals with a family problem and a situation of marital discord unlike the other crimes against society at large, cannot be forgotten. It does not however mean that the Police should not appreciate the grievance of the complainant woman with empathy and understanding or that the Police should play a passive role. S.498A has a lofty social purpose and it should remain on the Statute book to intervene whenever the occasion arises. Its object and purpose cannot be stultified by overemphasizing its potentiality for abuse or misuse. Misuse by itself cannot be a ground to repeal it or to take away its teeth wholesale. The re-evaluation of Section 498-A merely on the ground of abuse is not warranted. Besides that, while courts are confronted with abusive dimensions, sometimes very visibly in Section 498A prosecutions, we cannot close our eyes to a large number of cases which go unprosecuted for a variety of reasons.

(Law Commission, 2012, p. 14)

The commission suggested that the offense should remain non-bailable. However, it has not considered the spate of research work done by medical practitioners, health professionals, or women's organizations; nor has it invited these stakeholders to present their views. The discourse relating to misuse of law dominates while all other voices remain suppressed. Suggestions regarding the underuse of the laws or making the law more accessible are overlooked.

Diluting the provision relating to arrest

Further, in the recent years, the Ministry of Home Affairs (MHA) has issued strict advisories to 'avoid unnecessary arrests in 498A cases to curtail the misuse of the law'. As per the advisory issued in 2009 by the ministry, the state governments have been asked to comply with the procedures laid down by the apex court in *D.K. Basu v State of West Bengal* (1997) and to make arrests after reasonable belief and 'to settle the disputes by counseling, mediation, and conciliation between the parties'. The MHA in 2012 further reiterated that arrests should be made only after the written orders of Deputy Commissioner of Police or officer of equivalent level and for 'acceptable reasons'. It is further stated that the Women's Cell must screen the 'frivolous cases at initial stages and the Section 498A can be invoked in rare cases'. In 2014, another similar advisory was issued while referring to the decision in *Arnesh Kumar's* matter, to enforce the directions of the court relating to arrests. Thus, over the years, orders have been issued repeatedly to dilute the

law without referring to any data or conducting any research on the subject. The rule of law is twisted when it comes to the situation of crime against women within the confines of home.

Closing the eyes toward atrocities against women

Appallingly, the Union Minister for Women and Child Development (WCD) in 2014 asked the NCW ‘to provide a window for men’ who alleged that they have been falsely implicated into the cases of domestic violence, dowry, or rape (Sowmiya, 2017). The twisted logic blindly made attempts to uphold the male privileges while undermining the women’s claim as citizens. It is also not astonishing that the NCW in 2014 too proposed to amend the Dowry Prohibition Act to *enhance the penalty provisions for the misuse of the law*. This was later dropped by the MWCD after receiving comments from the high-level committee on the status of women and the MHA (Dhawan, 2014). In 2015, again the government planned to amend Section 498A while enhancing the provision of penalty for misuse (Tiwary D., 2015), but it was turned down later (Dhawan, 2015). The patriarchal domination has guided the actions of the institutions for years.

Hence, over the years, the state is living in a state of denial and has been blindly repeating the fact of misuse of the law without considering the statistics, facts, or situation at the ground. No recommendations are being sought from different departments or the institutions collating the data relating to the situation of women and children. The NFHS data have neither been used nor verified before issuing such advisories. The issue of domestic violence requires a comprehensive approach and coordination from various sectors such as health, law, medicine, psychology, economics, social care, and welfare, among others. When convergence as a norm is followed in all other aspects, on this issue no such approach is being adopted. In fact, the state took no steps to address the systemic inequalities because of ‘fear of upsetting economic and political power of classes to which it was tied’. Or as Palriwala stated,

When existing power equations were threatened, those who were least able to use, let alone misuse the law, were accused of malfeasance by those whose position and assertion of right was being questioned.

Negating the justice, shielding men

In many cases, the judiciary is found reluctant to punish the abusive men even when there is enough evidence to indicate that they are guilty. Legal technicalities are deployed to acquit the accused persons. For instance, in *Wazir Chand v State of Haryana*, 1989, Veena sustained burn injuries within

a year of her marriage and was taken to hospital where she died. The trial court held her husband and parents-in-law guilty under Sections 306 and 498A. The Supreme Court set aside the conviction on technical grounds. In another case, a trial court judge based on technical defects in recording the dying declaration of the victim exonerated her husband from all charges (*Kamalakhar Nandram Bhavsar v State of Maharashtra*, 2004). This was later set aside by the High Court. In *Narsingh Prasad Singh v Raj Kumar* (2001), the High Court reduced the sentence of abusers who had mercilessly beaten a victim with a wooden stick and planned to burn her alive to a small fine of Rs. 1,000 without providing any reason as to why the sentence should be reduced. In *Krishan Lal v Union of India* (1994), it was held that

With the passage of time after marriage and birth of children, there are remote chances of treating a married woman with cruelty by her husband or his relatives.

In *Girdhar Shankar Tawade v State of Maharashtra* (2002), it was observed that

‘cruelty’ has to be understood having a specific statutory meaning and there should be a case of continuous state of affairs of torture by one to another.

Hence, cruelty per se is hardly punished. The courts continue to acquit men who commit brutal acts of violence on flimsy grounds using technical or procedural lacunae as excuse. The brutal scars of injuries; bleeding organs; fractured limbs; and weak, mutilated, scarred, or burned bodies of women are considered not enough evidences to prove the crime.

Domestic violence as a crime is accorded low priority

Domestic violence has been accorded a low priority in law as well as by the society. So, when women are raped, the rage rises selectively and people demand death penalty for the rapists. However, when a woman dies because of violence being inflicted at home, the society remains silent. Perhaps, the rape is seen as a crime inflicted against a daughter or wife, who belongs to another man, but when a wife dies within a home, the rage is not seen because she is considered a property of the man who owns her and could therefore treat her the way he wants to.

The relationship between a man and a woman is deployed to filter the crime rather than by utilizing the objectivity of the law. This attitude is reflected in several of the judgments delivered by the courts. For instance, in the famous *Naina Sahni Tandoor Murder case* (*Sushil Sharma v State*

NCT of Delhi, 2013), the apex court commuted the death sentence to life imprisonment

because murder was the outcome of strained personal relationship. It was not an offence against the society.

The court viewed this crime as a 'crime of passion' while emphasizing the masculine prerogatives keeping 'private relationship' outside the sphere of justice or, as Pateman (1988) delineated it, as a 'sexual contract'. Hence, the gruesome murder and the ruthless violence are not taken seriously because of the relationship between the parties. The legal system takes recourse to a conservative approach while scrutinizing women's claims. It is held,

the deceased was a qualified pilot and also the general secretary of Youth Congress (Girls Wing) Delhi. She was an independent lady who was capable of taking her own decisions. . . . She was not a poor illiterate hapless woman. Considering the social status of the deceased, it would be difficult to come to the conclusion that the appellant was in a dominant position qua her. The appellant was deeply in love with the deceased and knowing full well that the deceased was very close to PW-12 Matloob Karim, he married her hoping that the deceased would settle down with him and lead a happy life. The evidence on record establishes that they were living together and were married but unfortunately, it appears that the deceased was still in touch with PW-12 Matloob Karim. It appears that the appellant was extremely possessive of the deceased. The evidence on record shows that the appellant suspected her fidelity and the murder was the result of this possessiveness. We have noted that when the appellant was taken to Lady Harding Mortuary and when the dead body was shown to him, he started weeping. It would be difficult, therefore, to say that he was remorseless. The fact that he absconded is undoubtedly a circumstance which will have to be taken against him, but the same, in our considered view, would be more relevant to the issue of culpability of the accused which we have already decided against him rather than the question of what would be the appropriate sentence to be awarded which is presently under consideration. . . . Murder was the outcome of strained personal relationship. It was not an offence against the Society. The appellant has no criminal antecedents. He is not a confirmed criminal and no evidence is led by the State to indicate that he is likely to revert to such crimes in future. It is, therefore, not possible in the facts of the case to say that there is no chance of the appellant being reformed and rehabilitated. We do not think that that option is closed. Though it may not be strictly relevant, we

may mention that the appellant is the only son of his parents, who are old and infirm. As of today, the appellant has spent more than 10 years in death cell. Undoubtedly, the offence is brutal but the brutality alone would not justify death sentence in this case. The above mitigating circumstances persuade us to commute the death sentence to life imprisonment.

(para 83)

The bench composed of Justice P. Sathasivam, Justice Ranjana Prakash Desai, and Justice Ranjan Gogoi could not factor in the brutalities committed in a gruesome manner by the accused. It wrongly assumed that as Sahni was educated and independent, she cannot be subjected to violence. Also, it is stated that by being disloyal to her husband, she was asking for it. In a country where violence is institutionalized and legitimized in many ways, to say that an educated woman is free to make choices is a myth. The myopic conservative vision could not realize that in a country where a live-in relationship is a taboo, it is not easy for a woman to seek help (Rautray, 2013).

Testing the fidelity of the wife, but for men there are no parameters

Many petitions for divorce are filed by men whereby the attempts are made to assassinate the character of a woman. Blatant lies are spoken in the courts about her nature, her inability to perform the household work, or that she has not respected her in-laws, the inability of her parents to give sufficient dowry, and so on. Perhaps, it is easier to count the faults with women as wives. The courts have legitimized such bundle of lies that are against the dignity of any person through various judgments pronounced in the open courts. For men, no such parameters are deployed to measure their fidelity or their ability. For instance, the Allahabad High Court in *Neelam v Ram Asrey* (2020) held that

Thus, the crux of the matter is that even Supreme Court has approved D.N.A Test as the most legitimate and scientifically perfect means, which the husband could use, to establish his assertion of infidelity. This should simultaneously be taken as the most authentic, rightful and correct means also with the wife, for her to rebut the assertions made by the respondent husband, and to establish that she has not been unfaithful, adulterous or disloyal.

The court opined that the wife should undergo the deoxyribonucleic acid (DNA) test to prove that she is not disloyal, unfaithful, or adulterous. The court has not dwelled on how a man should prove his loyalty or faithfulness. The question of legitimacy of the child has been raised in several other

cases such as *Dipanwati Roy v Ronobroto Roy* (2015), *Nandlal Wasudeo Badwaik v Lata Nandlal Badwaik* (2014), *Sham Lal @ Kuldeep v Sanjeev Kumar* (2009), *Sharda v Dharampal* (2003), *Kamti Devi v Poshi Ram* (2001), *Goutam Kundu v State of West Bengal* (1993), and *Dukhtar Jahan v Md Farooq* (1987). The same enthusiasm as shown in assassinating the character of a woman is not shown for pointing out problems with the men's behavior such as he may be an alcoholic, a vile, or a murderer, or has committed adultery or has abandoned his wife and therefore needs to be penalized. Different parameters are deployed by the courts to measure the 'goodness' of wives but for men no such scales have been devised.

Penalize the victims who complain

In several cases, the law is interpreted to deter the complainants from raising their voice. Filing a complaint under 498A itself is considered an act of cruelty. For instance, the Karnataka HC, while quashing the complaint made by a woman, directed her to pay the cost of Rs 25,000 to her ex-husband for abusing the process of law by registering her case under Section 498A. The court alleged that the

petitioner (man) has suffered an untold misery in the hands of the complainant.

(Mustafa, 2019)

Women who raise complaints are not seen as the citizens demanding protection from their abusive husbands. The Supreme Court in *Narasimha Shastri v Suneela Rani* (2019) held that filing of criminal cases as the one under 498A that is subsequently rejected by the Family Court is sufficient to be construed as an act of cruelty by the wife. In *Rajkishore Prasad v Raj Kumari Devi* (1986), the wife alleged that the husband has married another woman and has been ill-treating her. The wife therefore lodged a complaint under Section 494 IPC, but the Patna HC held that launching the criminal prosecution against the husband would amount to mental cruelty.

In *Sumana Bhasin v Niraj Bhasin* (2015), the court had imposed penalty on the aggrieved woman for filing a 'false complaint' under the PWDVA. The judge dismissed the application of the aggrieved woman while imposing the cost of Rs. 1,00,000/- on her. The court stated that

the imposition of cost is in furtherance of the principle that wrongdoers should not get benefit out of frivolous litigations.

The overzealous courts without looking at the aims, objectives, or the purpose of the law, interpreted the provisions to deter women from filing the complaints. In contradiction with the objective of formulating the law, the

court penalized women. This decision narrowly interpreted the legal provisions and defeated the very purpose of the law.

The fragile male ego

The fragile male ego does not stop at penalizing the women who complain; rather, it went on to reestablish male supremacy by rolling the wheel in the opposite direction as in *Hiral P. Harsora v Kusum Narottamdas Harsora* (2016), the Supreme Court struck down the words ‘adult male’ from Section 2(q) of the act to include women and minors as respondent under the law. This verdict implies that women and minors, and not just men, could be charged for committing acts of violence. The thrust of the judgment is on formal equality. The Court pitted the women within families against each other instead of holding men responsible for their violent actions.

Even otherwise, the magistrates have been routinely rejecting the prayers for protection orders with respect to the matrimonial home, more specifically if it is owned by the in-laws. The courts have been bringing in the rights of inheritance to pit against a woman’s right to reside in a shared household. While there are judgments that reaffirm the wife’s right to reside in the shared household by virtue of her marriage, irrespective of whether the property is rented or owned by the husband, the repercussions of the (in)famous *SR Batra v Taruna Batra* (2007) continue to be felt in the lower echelons of judiciary too (*Raj Kumari v Preeti Satija*, 2011; *Pal Singh v Priyanka Singh*, 2011, and others). In several cases, the High Courts have held that the daughter-in-law has no right to reside in the house of the parents of the husband against their consent or wishes (*K Rajendran v Ambikavathy*, 2012; *Neetu Mittal v Kanta Mittal*, 2009; *Sudha Mishra v Surya Mishra*, 2014). The courts could not imagine the situations beyond the confines of the patriarchal limits. It is in 2020, in *Satish Chander Ahuja v Sneha Ahuja* (2020), that the court while overturning the decision in *Batra’s* case has upheld the woman’s right to reside in her matrimonial home even if it is a shared family property and not just in the separate property of her husband.

Are wives lesser citizens?

The Constitution of India has granted the right to equality and dignity to all its citizens. However, when it comes to actual implementation of law, this paradigm is hardly revoked. The legal vocabulary is full of archaic and draconian concepts such as the ‘restitution of conjugal rights’—a concept that legally sanctions rape within marriage. Its language is used to humiliate and torture women. Further, when it comes to implementation of this clause, the courts maintain a conflicting stance whenever the rights of wives are being invoked and often end up giving confusing decisions. For instance, in the famous case of *Harvinder Kaur v Harmender Singh* (1984), while

commenting on the applicability of the constitutional rights within a family, the court upheld that,

introduction of Constitutional law in the home is most inappropriate. It is like introducing bull in China shop. It will be a ruthless destroyer of the marriage institution and all that it stands for. In the privacy of the home and married life, neither Article 21 nor Article 14 have any place. In a sensitive sphere which is at once most intimate and delicate, the introduction of cold principles of Constitutional Law will have effect on weakening of marriage bond.

Though this provision was later challenged in *Sareetha v T Venkata Subbaih* (1983), the situation has not changed. The Supreme Court in *Saroj Rani v Sudarshan Kumar Chadha* (1984) upheld the Delhi HC decision and overruled the verdict by the AP High Court while arguing that introduction of equality clause within the home will destroy the institution of marriage. Here traditional notions conflict with the right-based laws, thus resulting in inconsistent opinions. Analysis of numerous other judgments reveals that wives are treated as lesser citizens by the law.

The courts' construction of a perfect wife

The legal categorization of the battered woman as a right holder is deeply normative and descriptive. When she seeks legal protection, as per the law implementers, she must conform to the identities of the regulatory normative frame. This paradox denies battered women the benefits that are attached to the official category of the right holders. The courts in several cases have construed as to who can fit in the stereotype image of a 'perfect dutiful wife' and therefore be granted reliefs. 'Bad wives' are denied justice.

As per the constructions by the courts, a woman who refused to make food or serve tea to her husband or his relatives, or the one who refused to wear traditional symbols such as '*sindoor*' or '*mangalsutra*' is perceived as a 'bad wife'. In *S. Hanumantha Rao v S Ramani* (1999), the apex court adjudicated on the wife's unwillingness to wear *mangalsutra* to be treated as an evidence of mental cruelty against her husband. Battered bodies and shattered minds are neglected, while issues such as not wearing the *mangalsutra* are prioritized. A woman's body is construed as a marker of honor. It became the metaphor of vulnerability, and therefore, it needs to be controlled. The symbols worn by the married Hindu women such as putting *sindoor* or wearing the *mangalsutra* are seen as marks that hold a woman as a property of a man and assumingly provides protection against advances from other men.

In *Bhaskar Das v Renu Das* (2020), the Gauhati HC held that refusal to wearing a *sindoor* or *sakha* by a Hindu wife is tantamount to her

unwillingness to continue conjugal life and amounts to cruelty on the basis of which a husband can obtain divorce. The courts, thus, uphold the conservative morality while setting limits of the autonomy and freedom of a woman. The courts decide a woman's place in a society, control her body and mind, regulate her being, her interaction, and her relationships, including what she should wear.

The courts through their decisions construct an image of an ideal stereotype of a 'good wife' who is subservient and submissive. For instance, in *Arup Hazra v Manashi Hazra* (2009), the wife was found guilty as she 'refused to cook food and serve meals to the husband and any members of his family and used to move out of home without permission'. The wife said that her husband was harassing her because her family refused to pay Rs. 50,000 as the dowry. Similarly, in *Kalpna Srivastava v Surendra Nath Srivastava* (1985), the Allahabad HC explained,

Where a wife refuses to prepare tea for the friends of the husband, she not only hurt his ego but causes him humiliation before his friends who may not be tiring of lavishing praise on their wives.

Where a wife lodges false report of non-bailable offence against the husband and his relations who have to rush to the court to obtain bail in order to avoid arrest she causes husband deep anguish and brings disgrace and ignominy to the husband and his relations, besides causing harassment.

Where a wife gets rid of a pregnancy without the consent of the husband, she causes him mental torture and deprives him of the pleasure and pride of being a father.

Women who prioritize their career or wish to live separately from their in-laws are labeled as 'bad wives' and therefore, husbands are being granted the liberty to obtain divorce from such wives. What is established through such decisions is that the state knows what is best and women are incapable of making decisions and are not trustworthy; therefore, the system must decide for them. The courts routinely disrespect women's worth and being and infantilize them. Such patriarchal construction by the courts, therefore, uphold the regressive cultural norms that treat women as sub-humans.

In *Suman Kapur v Sudhir Kapur* (2008), the husband was granted the decree of divorce because the court felt that his wife's unwillingness to have a biological child is a cruel behavior. The standards and morals of the court could not tolerate the fact that the wife got a brilliant academic record. In *Samar Ghosh v Jaya Ghosh* (2007), the court concluded that the unilateral decision of refusal to have intercourse for a considerable period or to not to have a child is tantamount to cruelty. The stereotypical attitude and conservative mindset in the courtrooms prevail while the rule of law, the

constitutional norms, and values all are ignored. The identity of a woman as a citizen remains hidden behind the imagery of a perfect, subservient wife.

The Supreme Court while propagating the orthodox family ideology, in *Narendra v K Meena* (2016), dictated that separating a Hindu husband from his family amounts to ‘cruelty’ as it is a pious duty of the man to stay with his parents to care for them. This view is reiterated in *Bhaskar Das v Renu Das* (2020) by the Gauhati HC. The courts upheld the women’s conservative roles while reinterpreting a hegemonic understanding of Hinduism (Kapur, 2016). This approach ignores the fact that as per the norms of patrilocal marriage, a girl shifts territorially from her natal family at the time of marriage. Technically as well as morally, she has social obligations toward her parents too. Hence, preconceived traditional biases and prejudices operate within courtrooms. The narrow repressive mentality is reflected when the court reinforced the subordinate position of women. It considers a woman as an appendage to a man.

In *Ranjith PC v Asha Nair* (2020), a Division Bench of Kerala HC granted a decree of divorce in favor of husband on the grounds that,

In the case on hand, the petitioner’s turning to be a drunkard can only be taken as the natural outcome of pressure exerted on him by the respondent to have a separate residence to the exclusion of petitioner’s mother (para 19) . . . Making a daughter-in-law to do household/ domestic work is also not something unusual (para 22).

The court’s sympathetic attitude toward the drunkard husband failed to draw the fine line between doing household work and brides being treated as an unpaid domestic worker who could be tortured for dowry. The expectation that wives must do cooking, cleaning, caring for family, and all related work is defined by the patriarchal societies and is reinforced by the courts. Instead of challenging the status quo or making an effort to transform the society, traditional norms are being reiterated and reinforced making it difficult for women to obtain gender justice.

Pronouncing judgments rather than doing justice

The courts measure the ‘rightness of women’s action by applying stringent rules of wifely behavior as set by religion or traditions’, and condone violence by men (Gangoli, 2007). In *Birdichand Sarda v State of Maharashtra* (1984), the court constructs the victim as an overtly sensitive woman who made unreasonable demands for undivided attention from her husband. The women’s group in Maharashtra initiated a signature campaign against this insensitive construction of a wife and a poster exhibition was organized against it titled ‘*Mein Ek Manjushree*’. (Haksar and Singh, 1986). In *Waghmare v State of Maharashtra* (1990), a woman was abused by her

husband and his family for a motorcycle. After two months of the marriage, her brother-in-law poured kerosene and set her on fire. She was saved then, but she eventually committed suicide. The Bombay HC held that these incidents of violence were not sufficient to lead her to commit suicide and that the demand for a motorcycle was not a dowry demand. The court acquitted the guilty because the victim did not follow the ‘conventional’ pattern of wifely behavior and that she was not ‘consistent’ because ‘she withdrew the complaint of being burned by her brother-in-law two months after her marriage’. The court ignored the fact that there is intense pressure on the woman to preserve marriage.

Important legal principles are ignored

In Western countries, the concept of domestic violence is being addressed in multidimensional manner. Theories have been propounded as to why women stay in a violent relationship. One of those theories holds that a woman continues to stay in a violent relationship because she develops a traumatic bonding with the abuser. Coined in 1973, the term Stockholm syndrome describes the response of four employee captors when they were held hostage in a bank in Stockholm (Graham et al., 1988). The hostages expressed sympathy toward their captors. This is considered highly irrational behavior as their life was in danger. Essentially, it is seen as a survival strategy. Scholars have used this paradox to describe the domestic violence situation in which a female hostage refuses to leave because she develops a bond with the perpetrator.

Research has focused on the behavior of the victim and her response to the violence situation. For instance, Lorena Bobbitt was found not guilty for ‘malicious wounding’ by the jury due to insanity causing an irresistible impulse to sexually wound John Bobbitt whom she married in 1989. In 1993, after years of being raped, beaten, and sodomized by her husband, Lorena cut off his penis with a knife while he was lying asleep in his bed, walked away and threw it out of the window of her car. John’s lawyer argued that she was vindictive and calculating (Margolick, 1994). This matter highlighted the severity of marital rape and altered the legal discourse on domestic violence though media laid much influence on the aspect of *bobbitization* (Waxman, 2019).

Sally Challen was convicted of murder in 2011. But in June 2019, she walked free because her conviction was quashed on the grounds that Challen was suffering from a psychological ‘adjustment disorder’ that occurred due to decades of coercive control by her husband recasting her as a victim of domestic abuse rather than as a cold-blooded murderer (Davies, 2019). The English legal system took the concept of coercive control seriously and acknowledged her mental state (Nugent, 2019).

In India, no such research has been conducted on the behavior of victims or the batterers. The law here has not evoked the fine nuances pertaining to the psychological state of victims of abuse or the effects of violence on children. More importantly, the oppression is harming the families and communities; however, the state is not investing in resources to study the deep impact of violence.

The concept of battered women syndrome

In the West, the term battered woman syndrome (BWS) coined by Lenore Walker (1984) describes the psychological condition of a woman who experiences a constant cycle of abuse combined with patterns of intimidation for a prolonged period. A woman in such a situation exhibits distinct psychological and behavioral symptoms. Consequently, she suffers from 'learned helplessness' when she begins to believe that there is no escape (Seligman, 1972). The threat of further violence and intimidation prevents her from sharing her concerns with anyone else, thus ensuring isolation. A woman assaulted and victimized over years may develop irrational beliefs and blame herself for the abuse (Walker, 1979). She becomes hyper-vigilant and may develop a fear for her life or the lives of loved ones. This fear and uncertainty of abuse compels her to indulge in destructive behavior. The BWS, thus, is a deeply layered multiple victimization (Nigam, 2016a). However, this theory is criticized for being victim-centric.

Nevertheless, in many Western countries, BWS has gained legitimacy and the courts are examining the phenomenon of the severe psychological trauma to women caused by prolonged abuse. Defense lawyers are using this doctrine to defend a charge of murder and to mitigate the sentence. This concept explains the reasonableness of a woman's actions in self-defense against her abuser (Gillespie, 1989). Inclusion of psychological defense implies that the law considers the mindset of the person and the conditions in which a reasonable person may react in similar circumstances (Schneider, 1980). Schneider argued that BWS is intended to

overcome sex-bias in the law of self-defense and to equalize treatment of women in the courts.

(Schneider, 1986)

The courts are being advised to use the principles that are different from that of a 'reasonable man' or the stereotypical 'reasonable woman' who is docile and submits to violence without complaint. BWS is considered a 'defense of necessity' based on the idea that because a woman is placed in a difficult situation, her context and location should be seen while adjudicating the matter.

In England, in the matter of Kiranjit Ahluwalia, the BWS defense was pushed for the first time and the 'immediacy' requirement of provocation was done away with. In *R v Ahluwalia 1* (1992), the Court of Appeal using the doctrine of provocation and the concept of the 'reasonableness' requirement held that the psychological characteristics of a battered woman could be useful and allowed the jury to consider the effects of long-term abuse. Similarly, Sara Thornton was facing a violent situation. Her partner threatened to murder her. She was psychologically paralyzed and because of the threat of being utterly dejected, she stabbed him and was convicted of murder. The court rejected her plea that she did this to defend herself (*R v Thornton*, 1996). She then adduced the fresh evidence that she had a personality disorder and the Court of Appeal ordered a retrial. In *R v Charlton* (2003), following the threats of sexual abuse against herself and her daughter, the defendant killed her obsessive, jealous, and controlling partner. Her term of five years' imprisonment was reduced to three and a half years because of the terrifying threats made by a man who was determined to dominate her life. The court held that the threats created a genuine fear for the safety of herself and of her daughter. This caused her to lose control and make the ferocious attack.

In the US, in *State v Kelly* (1984), the court upheld the use of the BWS doctrine as a defense because

some women become so demoralized and degraded by the fact that they cannot predict or control the violence that they sink into a state of psychological paralysis and become unable to take any action at all to improve or alter the situation.

The Supreme Court of New Jersey held that the existence of BWS was relevant to the honesty and reasonableness of a woman's claim that she believed her life was in imminent danger of death or serious injury. Later, almost all the 50 states in the US permitted expert testimony in the matters relating to BWS. In Australia, the court in the matter of *My Chhay* (1994) opined that

a loss of self-control can develop even after a lengthy period of abuse and without the necessity for a specific triggering incident.

In another matter, the court instructed the jury to look into a history of abuse (*Runjajic and Kontinnen*, 1991). In Canada and New Zealand, the legal system is considering the impact of BWS. However, the law in India has not yet evolved to understand the nuances of the BWS.

The battered woman syndrome in India

The discourse on the domestic violence law in India has failed to acknowledge the fact that in the cultural context in which women's subordination

is a norm, often, women are socialized to silently tolerate the oppression. The legal system needs to understand the intricate social and psychological complexities of the situation of a battered woman. For example, the history of abuse, the patterns of violence, and a woman's psychological state are the factors that may affect the outcome of the criminal litigation. The court held the man accused of abetting suicide of his wife while applying the BWS. In *State v Hari Prasad* (2016), the court upheld the BWS doctrine and stated that a victim could defend herself by launching a counterattack. The court opined that,

Pushpa could not do so because biologically she was weaker. . . . The provocation by Hari Prashad became her compulsion to end the domestic relationship and she did by taking the extreme step of suicide.

The court portrayed the victim as a docile, obedient wife 'who has made every endeavor to stand against torture', and it thus valorized her virtues of tolerance and patience. The court stated that she took the extreme step of ending her life 'when she was hoaxed', hence the court utilized the doctrine of BWS to understand the situation of a woman in marriage.

Nevertheless, when applied in the Indian context, the theory relating to the BWS or the Stockholm syndrome requires a critical adaptation. For instance, while recognizing the concept of 'learned helplessness', the situation of 'systemic helplessness' in which the cultural and economic factors that perpetuate violence without offering any realistic choices to the victims also require a reconsideration. In India, women continue to stay in violent relationships because no viable options exist outside marriage. Absence of support networks and a range of factors such as inequalities within the relationship, fear, stigma, and cultural conditioning prevent women from walking away from a violent relationship. Legal and social institutions further treat women as second-grade citizens, reinforce patriarchal assumptions, reiterate entrenched misogynist beliefs, and deny them legal entitlements.

The concept of self-defense in the Indian legal system

The Indian legal system is a microcosm of a wider patriarchal structure. Based on the Victorian ideology, introduced by the colonial rulers, the criminal legal system is predominately androcentric and reiterates gender stereotypes. Though Sections 96–106 IPC define the individual's right to self-defense, there are negligible cases in which the accused women have used this provision to defend themselves. More so, in the situation of wife battering, the self-defense option to respond back violently is hardly used by women considering the sociocultural arrangements in a deeply embedded hierarchical social order. Women in the patriarchal societies are not

conditioned to be aggressive. Submissiveness, docility, obedience, and the non-questioning approach are traits acquired under the guise of respect and love for the hierarchical and autocratic family. Women therefore end up internalizing culturally defined gendered roles. Lack of knowledge regarding entitlements, low expectations, self-sacrifice, and compliance are attributes that affect the willingness to compromise. Frequently, women's refusal to show rage is seen as

culturally instilled response and a symptom of internalized subordination, might also be a historically adopted strategy of surviving an aggressive patriarchy.

(Banerji, 2012)

Though this argument ignores the women's agency and their capacity to negotiate within the given circumstances, it is true that women's response to violence is not based on aggression; they utilize other strategies such as voicing concerns within the family or involving the kinship network to pressurize husbands to stop the act of violence.

Biased patriarchal agenda

Faludi (1991) in the Global North context argued that the backlash has been set off not because of women's achievement of full equality but because of the increased possibility that they might win it. She theoretically describes the concept of backlash in two forms—one is institutional, and second is the war against women that operates more at a personal level. She explained that just when the women's quest for equal rights has started to gain ground with the extensive affirmation programs in place, just when women had joined the rank of virtually male-dominated, prestigious, and macho professions, just when laws protecting battered women were enacted, almost predictably an anti-feminist resistance set in. For every two steps forwards, there has been one step backwards.

Following the similar argument and considering how the laws and policies operate in the Global South, this work argues that the backlash is severely affecting women. As for every right gained on paper, women are experiencing harsh assaults at the ground level in terms of intensity as well as the number of incidences of violence. With every step forward, the hostilities and resentments are worsening. At the political and institutional level, the progressive movement is countered by the resistance from forces that fear change. Whereas in the North, restrictions are tightening in terms of women's right to abortion, in the South, the women are facing restrictions and control in everyday lives including the right to mobility, the right to bodily autonomy, the right to dream and aspire, and the right to life with dignity. Intense fear of female independence is resulting in fueling the harmful and

legally banned traditions such as child marriage, bride burning, dowry violence, and sex trafficking. Also, both institutional and personal backlashes operate—the institutional operates within the framework of the laws and the ways the laws are implemented, while the personal manifests itself as an intense aggression onto girls and women.

Instead of facilitating the access to justice, the system is creating a hindrance while interpreting the affirmative law adversely. As the implementers of the rule of law, the courts are duty-bound to apply the law as per constitutional provisions. But the stereotypes and the myths are frequently reflected in the verdicts. Perhaps, the issue of domestic violence is seen as a man versus a woman case rather than as a systemic oppression of women. Also, the courts have failed to draw a distinction between the serious violence and the disputes. The social and the structural context, the spatial location, the power relationship, and the controlling behavior asserted by the one who is in powerful position are different factors that govern the relationship between two persons.

The crux of backlash against domestic violence law

Law is considered a double-edged sword as it inevitably controls, monitors, and deters the abuser at the same time that it empowers, protects, and enhances freedom for the victim (Romkens, 2001). The law provides a platform for women to raise their concerns yet the constrained logic of the state as evident from the spate of judgments by the courts adversely affects the claim of the litigants. The issue of violence is being lost behind the technicalities or the procedural aspects of the law while the complainants are deprived of restorative or rehabilitative justice. The arguments of abuse of the law ignore legal objectivity and rationality. Several misogynist arguments are being made to twist the purpose of the law:

- The deniers argue that domestic violence does not exist in India. Family is glorified as an institution while undermining violence within it. Rather, violence is wrongly normalized as an act of discipline and control. This argument ignores the fact that no family can survive on the edifice of battered bodies or scarred minds. Also, domestic violence entails a huge cost to the individuals, families, and societies and hence, needs to be dealt with accordingly.
- The myth that the law is destroying the institution of family is being propagated without considering the fact that the law is democratizing the family while eliminating violence.
- Ironically, domestic violence law made to protect women from abuse is construed as one that is unleashing '*legal terrorism*' overlooking the fact that the law is protecting women against *patriarchal terrorism*.

- Most of the domestic violence cases, even if they involve grave harm, are disregarded and trivialized as ‘matrimonial disputes’. The legal system pushes for reconciliation, compromise, or settlement while twisting the legal process. This *patriarchal manipulation* is causing serious harm and re-victimizing the victims.
- The Dowry Prohibition Act, 1961 is ineffective as it has failed to curb coercive dowry demand or regulate the dowry abuse. It is necessary to rethink the strategies, both legal and otherwise, to prevent and control dowry-related abuse.
- The Indian jurisprudence has not yet focused on fine nuances of violence, such as criminalizing the coercive control, economic abuse, the battered woman syndrome, Stockholm syndrome, power and wheel theory, and inequalities within marriage among others, to emphasize a qualitative approach to gender justice.
- The courts are perpetuating the culture of silencing women while at the same time fostering the culture of violence with impunity by not fixing the accountability of the batterers.
- More number of women are filing the cases under the domestic violence law, yet the police are not investigating the cases seriously. Most of the cases are being withdrawn or settled because at every stage of the trial, women are being forced to compromise the case. Conviction rate is low because of the lackadaisical investigation, witnesses turning hostile, and extreme pressure being put on women to settle the case and withdraw the complaint. However, the data are being wrongly interpreted to depict these cases as false.
- Also, most of the cases are not filed in the ‘heat of the moment’. It is not so easy for a woman to walk to the police station and lodge an FIR against her violent husband nor the androcentric police is easily registering the cases against violent men. Women bear violence for years before deciding to make her private complaint public.
- The argument that educated, elite, and ‘disgruntled’ women are misusing the law negates the fact that violence occurs irrespective of class, caste, or religious bias. It also negates the fact that in the country where the legal literacy is minimal and women hardly are involved in making decisions about their own lives, accessing justice is not easy. This argument deviates the attention from the basic crisis that exists within the legal system, such as lack of access to justice, corruption, delays, technicalities, lack of personnel, absence of infrastructure, poor quality of services, inefficiency and ineffectiveness of the system, and a range of other problems.
- The logic that innocent relatives of the husbands are being jailed is wrongly made without considering the actual data obtained from jails. The prison statistics show that the jails are not filled with *saas* and *nanands*; rather, the arrests are not being made in cases under 498A and

the bail is given instantly in such cases. In fact, those who murder, burn, or kill women are not being held accountable for gruesome killings or unlawful actions.

- Suggestions have erroneously been made to compound the offense under 498A and make it bailable and non-cognizable without recommending the safety measures or supporting provisions for the survivors.
- Domestic violence is seen as a social crime while pitting a mother-in-law against her daughter-in-law and while absolving men of their accountability to the crime.
- *Battered women* are discredited and disregarded and termed as '*disgruntled women*' and 'liars' while ignoring the fact that once a woman is thrown out of her matrimonial house, it is not easy for her to survive because she is stigmatized at each and every step.
- A battered woman's complaint is dismissed saying that she is a 'gold digger' while ignoring the fact that frequently it is the family of a woman that makes a huge expenditure in arranging for dowry and wedding celebrations. The law does not provide for the equal distribution of matrimonial property at the time of separation or divorce. Even in cases in which dowry is being returned as '*stridhan*', there is no provision to return the expenses incurred on wedding function(s). Women have no claim in matrimonial property even when they spend years or decades in their matrimonial home. Getting maintenance is not easy. So, economically women remain at a disadvantaged position within the marriage.
- State construes women as 'obedient wives' or 'good mothers' rather than as citizens who have an independent existence while the accountability of the men is hardly questioned. Also, women are not trusted as citizens with agency by the state, as the one who can make decisions about themselves while the state presumes that it knows best.
- Marital rape is not considered a crime because the principle of consent is not applied within the premise of the home. This is regardless of the fact that rape within the home is equivalent to custodial rape, in which the dynamics of power and dependence operate to enhance the vulnerabilities of women.
- Domestic violence is construed narrowly as a man's versus a woman's issue rather than examining the larger socioeconomic or cultural dimensions in which patriarchy plays a major role in oppression. As per this faulty argument, those who critique domestic violence are seen as 'family destroyers' or 'family breakers' rather than as 'family democratizers' while ignoring the fact that it is the men indulging in violence who destroy the family. It is necessary to deal with toxic masculinity and to make family a democratic institution.
- In most of the violence cases, men are in a better financial position, utilize all their resources while filing custody suits, divorce, custody application, or for visitation to retaliate against the women's complaints. In

other words, this is similar to the SLAPP (strategic lawsuit for action against public participation), a term that applies to a lawsuit filed with the intention to censor, intimidate, and silence critiques by burdening them with the cost of legal defense until they abandon their criticism.

- Family is considered a private space where any interventions by the state are minimized. However, the same state does not act reluctantly when it invades the privacy of an individual while regulating the birth, marriage, divorce, or legislating on *love jihad*, in which the state infantilizes women by controlling the decisions about whom a woman may marry. Therefore, the state chooses to act selectively when it deals with a woman as a citizen.
- Further, this dichotomy of the false versus genuine cases has diverted the attention from the real issues that affect the justice delivery mechanism such as redressing inequalities within the institution of marriage, eliminating violence, overcoming difficulties in accessing justice, and the role of the criminal law in upholding the rights of the victims.

In short, it may be said that the system neither views women as equal partners to the marriage nor does it offer any protection to women in distress. The system needs to ensure the safety of women and children. The purpose of the law is to regulate human conduct, deter crime, and to maintain law and order. However, the domestic violence law is co-opted by those in power. The law made to protect women remained underused and has failed to provide justice to the battered women. Rather, the law is being twisted and manipulated to protect the entitlements of those in authority. Legal regulations work selectively to grant the males control over money, resources, and authority; control over children; and control over women's labor, reproduction, and sexuality. Unrepentant abusers are shielded, comforted, and excused while battered women are being re-victimized. What is required is a human rights framework that seeks to provide substantive equality and gender justice and bolster the process that strengthens women's agency to challenge structural inequalities in the private sphere of families.

‘DISGRUNTLED WOMEN’ AND ACCESS TO JUSTICE

Feminism is hated because women are hated. Anti-feminism is a direct expression of misogyny; it is the political defence of women hating.

(Dworkin, 1983, p. 195)

Criminal law fixes the accountability of the abusers, while civil law addresses concerns relating to civil remedies and reliefs to the victims. The aim of the law is to deliver justice and not to malign, stigmatize, or stifle the voice of the complainants. However, domestic violence laws are interpreted and enforced in a way that victims are being blamed and charged for not bearing the abuse silently. This backlash against battered women is deviating the attention from the real problems that are hindering the access to justice, increasing the distrust of common citizens in the system, and failing to resolve the genuine complaints. This chapter explores the problems in the access to justice besides examining who the ‘disgruntled women’ are, why they are ‘disgruntled’, and if they can really access the legal system easily. It also explores other myths that operate and suggests that the rhetoric of the misuse of law is based on the politics of fear. It argues that the backlash is undermining the laws that provide justice to women by charging women and feminism for all the crime that batterers perpetrate. It suggests that there is a need to examine how the laws are implemented and to determine its impact on the complainant and the society at large.

Battered women and the discriminatory citizenship paradigm

Citizenship confers a legal and a political status to an individual vis-à-vis a nation state. The citizenship law came into existence with the independence of India and the writing of the Constitution. Prior to independence, an individual was considered a ‘subject’ of feudal kings or the British Empire (Thapar in Newsclick, 2020). The question of legitimacy of the colonial

state raised a new way of thinking in which issues have been brought up about the moral and the political obligation of the state. In postcolonial India, the idea of citizenship embodies the duty of resistance and demanding rights, giving a new way of thinking about the relationship between a citizen and the sovereign state. Jayal (2013) noted that citizenship is contested in its three dimensions since independence: As a legal status, as a bundle of rights and entitlements, and as a sense of identity.

However, scholars noted that for women to engage with the state as citizens is not an easy process in a patriarchal society that sees them as an appendage of men. The state confers ‘second-class citizenship’ to women (Rajan, 2003). The law encodes the male privileges and female oppression and enforces the norms of patriarchy. The welfare programs initiated by the state also view women as wives, mothers, and daughters rather than construing them as independent subjects with rights (Sharma and Sujaya, 2012). More specifically, where women challenge the personal laws as citizens in postcolonial India, the state denies enforcing women’s rights within families (Rajan, 2003; Yuval Davis, 1997).

Moreover, women’s rights could not be enforced into practice for decades, because the very institutions that are being trusted with the duty to enforce these rights are part and parcel of the discriminatory structure. The voices of women are not taken seriously by the judiciary, police, and lawmakers. Several scholars have shown that the state is male, composed of mostly men who have resisted sharing their power and privileges with women for generations (MacKinnon, 1983). The backlash against women’s rights has persisted for years. A continuous discursive attack is being made on the gender-just laws and policies. The backsliding is dismantling the rights paradigm and is reversing the gender equity framework. It is normalizing violence either by diminishing the legal protections or by hollowing out the support systems.

The battered women complainants: Why do they approach the courts?

No court has ever suggested that the dead woman lied or misused the law, as the dead body is proof of the cruelty she faced. Judgments under Section 304B are full of exhortations by judges to parents-in-law to treat daughters-in-law as human beings, condemning the institution of dowry. However, when it comes to women who are alive and using Section 498A, judges are quick to dismiss them as ‘*disgruntled wives*’. How does one explain this hurt for the dead and condemnation for the living? Could it be that the very use of Section 498A in the exercise of one’s right to stay alive is seen as a misuse of the law? Is this not an attempt to intimidate women into

not using the law? A denial of access to justice? And what does one understand by expression ‘disgruntled wife?’

Jaising (2014b)

Within the legal system, the category consisting of the victim is based on a woman’s past or the current injury that she has faced, and therefore she approaches the law to seek the remedy against such harm. When a woman faces violence, in order to survive, she is compelled to exercise her right to seek remedy to stop the abuse. When she takes her complaint in the public domain, she is seeking peace, a life free from the violence that is taking a toll on her life. She may use a variety of informal networks within the families and in the communities, such as the religious or social organizations before approaching the formal forums to seek justice. The state splits its adjudicative authority with the religious and societal organizations in matters concerning personal laws (Solanki, 2011). A complainant may end up knocking on the doors of women’s commissions, CAW cells, local panchayats, women’s organizations, and a host of other institutions before registering her FIR or filing her complaint under the PWDVA.

When a battered woman contacts the police or the court, she is seeking a space to reclaim her sense of dignity. In a violent situation, she may be facing emotional and mental trauma. For her, access to justice is not easy. She may be hurt due to a medical injury. She may lack financial resources, support, and legal knowledge and may face stigma once she makes her private complaint public. She may be worried about the future of her kids or she may be stressed about her shelter and survival needs. Many women, therefore, continue to stay in a violent relationship silently for years. A combination of these factors increases stress and frustration among women who are already being subjected to violence, perhaps making them feel ‘disgruntled’, dejected, agitated, or frustrated. However, the courts have distorted the language while calling the ‘battered women’ as ‘disgruntled women’ and in doing so, are making a mockery of the law and deriding the women who raise their voice against violence rather than lending them dignity as citizens.

A complainant may not be aware of the technicalities of the legal system. It is the police, the lawyers, the courts, or the counselors who may explain to her the available legal remedies. Additionally, the bureaucratic hurdles make it complex for a common person to access justice. Without the help of a lawyer, it is difficult to navigate the law both in terms of content and its processes. Scholars have noted that the legal system is ‘unduly lawyer-centric’ (Rhodes, 2014). Murphy (2003) argued that in the courts in the Western countries, 83 percent of women seeking protection orders who had an attorney successfully obtained the orders, while only 32 percent without an attorney obtained favorable orders. Similarly, many complainants in India are not getting the reliefs because many are not in a situation to

understand the nuances of the law. Frequently, many battered women are not in a position to pay the lawyer’s fee out of their scarce and limited resources. In such a situation, it is necessary to examine the ills that plague the system rather than find faults with the complainants.

The apex court in *Arnesh Kumar v State of Bihar* and several other decisions pointed out that ‘disgruntled women’ are filing false complaints to take revenge against their husbands. However, this argument is flawed at various levels.

- 1 It is not grounded in the realities the majority of complainants are facing.
- 2 It does not elaborate who these ‘disgruntled women’ are and why they are disgruntled.
- 3 The approach of blaming the victims does not do justice to the complainants. The binary created by categorizing ‘disgruntled women’ and ‘genuine complainants’ is problematic because it encourages alienation and otherization.
- 4 This assumption is premised on the fact that the trial courts lack the ability to filter the ‘false complaints’, and therefore, because of this inefficiency of the system, all the complainants should be penalized.
- 5 This assumption draws attention away from the real issues hindering access to justice.
- 6 It re-victimizes the victim rather than penalizing the offender. Perhaps, women are being hated for speaking the truth and for challenging the patriarchal authority.

Is the term ‘women’ a homogeneous category?

Moreover, the term ‘women’ in itself is not a homogeneous category; rather, it is a multidimensional social construct that cuts across the division of caste, class, religion, age, marital status, geographical territories such as rural or urban, literacy or skill level, employment status, and a range of other factors in a diverse, multilayered, hierarchical society. In a country where identity politics is embedded deeper and is growing strong over the decades, isolating any particular group in itself is a difficult task (Vindhya, 2007). Therefore, a generalized sweeping statement about the category ‘women’ to dismiss their complaint and to discredit the complainant makes little sense.

The discourse on intersectionality as explained by Crenshaw (1991) rejects the single axis framework and construes ‘women’ as a heterogeneous entity with its multiple constituents. Those on the margins experience discrimination and subordination differently because of their social location in a structurally layered society and they remain excluded because of their situational context (Crenshaw, 1989). For instance, the experiences of a lower caste woman in a village may be completely different from those

of a woman in an urban upper-class location. Also, in a casteist, hierarchical, stratified, patriarchal society, inequalities and power politics operate to push the dominant masculine voices that gain advantage in terms of authority and control over those who are not so privileged (Nigam, 2016b); therefore, the term ‘women’ needs to be contextualized in a broad framework.

The courts, in many cases, have utilized this construct of the layered heterogeneity and have construed a woman not as a neutral citizen or a bearer of rights, but have examined women’s rights using the framework of religion, caste, or class. Decisions in *Shahbano’s* case (*Mohd Ahmed Khan v Shahbano Begum*, 1985), *Shyara Bano v Union of India* (2017) *Bhanwari Devi’s* case, *Mathura’s rape* case, and numerous others show how the filters of the caste, class, religion, and other backgrounds operate in the courtrooms.

Moreover, the political discourse on the Uniform Civil Code or the Women’s Reservation Bill has utilized the axes of caste and religion for decades to stall the advancements of the women’s rights while setting aside the constitutional provisions of equity and justice. Kabeer (2002) explained that perhaps, using the ‘parallel tradition of belonging’, the rhetoric exempts the personal law from the purview of the constitutional law. Nevertheless, this form of arrangement is based on male privileges and female subordination in which the community identity is utilized to prevent redistribution of the powers. Yet when construing the rights of complainants under the domestic violence laws, all such filters are sidelined by the courts.

Locating the ‘disgruntled women’

The Census of India (2011) shows that more than 58 million citizens are women, out of which 33.9 million are ever married; 48.1 percent are in the urban areas, and 48.6 percent are in the rural areas Ministry of Statistics and Programme Implementation, accessed on 15 October 2016).

Sex ratio is 943 females per a thousand males. It is 949 in rural and 929 in urban areas. This has decreased from 976 in 1961. Sen (1992) has referred to this as the phenomenon of ‘Missing Women’ and pointed out that more than 100 million females are missing, creating a gender imbalance. Increasing education levels or rising economic status has not made a positive impact on the skewed sex ratio. The deeply entrenched prejudices are shown in having a preference for a son while devaluing women. In such a society where women are struggling to merely survive, to assume that women are taking undue advantage of legal protection is a myth.

Around 27 percent of girls marry before attaining the age of 18 years and 7 percent marry before turning 15 years old, compared to 4 percent of boys who get married before their 18th birthday, though child marriage is prohibited by the law (Fact sheet by the Ministry of Health and Family Welfare, undated). Some are promised in marriage before they are born to secure

their future, though the *gauna* takes place when they attain puberty. Child marriage is prevalent in rural areas than in urban areas and high in the central and western parts of India. Patriarchal social norms consider girls as an economic burden and conditioned them to be adaptable and docile wives.

The literacy rate among urban women is 79.92 percent and 58.75 percent among rural women (National Institute of Rural Development, 2016). In terms of educational enrollment, females lag behind males. Despite the constitutional guarantee for equal opportunity for education for both sexes, the CSWI (1974) noted, ‘Women’s educational disadvantage is both a symptom and a cause of social oppression’. Schemes such as ‘*Sarva Shiksha Abhiyan*’ could not reach all, and many women are denied their right to education. Article 21A guarantees ‘Education for All’; however, the gender gap in literacy level is higher among older adults and elderly (Chandra, 2019).

Paulo Freire, a Brazilian educator, in his work *Pedagogy of the Oppressed* in 1970 outlined his theory of education to use the ‘dialogical action’ to overcome oppression. Education, therefore, is something more than basic literacy and numeracy and involves knowledge about the rights in which a person can identify domination and challenge the oppressive social norms. However, the Government of India, in its education policy for decades has focused on increased enrollments, retention, and achievement in primary education. Seldom have questions been raised about the value and relevance of the literacy that can help the beneficiaries articulate their needs or participate in decision making (Patkar, 1995). No emphasis is laid on 4 As—Awareness, Assertion, Attitude change, or Action. In such a situation, when legal awareness is minimal, to say that the laws are being abused is unacceptable.

To legally file a matter in the court, a person has to be proficient in legal nuances. Still, not many citizens are legally proficient. Legal education is not part of the common syllabi in schools or colleges. In 2005, the Government of India initiated the National Legal Literacy Mission. However, considering the dire need of the legal education and reach, the efforts remain ineffective. Also, the maxim *Ignorantia juris non excusat* or the ‘ignorance of law is no excuse’ could hardly be applied in the Indian situation. The Supreme Court in the matter of State Rep by the *Drug Inspector v Maniraman* (2019) waived the punishment of the accused charged under the Drugs and Cosmetics Act, and one of the grounds taken was that he was not aware of the fact that he has to obtain license for the sale of the drugs. In many other cases, the principle of ignorance of law has been revoked by the courts such as in *Deputy Commissioner of Income Tax v Sms India Ltd* (2006), and *Dhanalakshmi v Devaki Ammal* (2013), considering the situation of legal literacy in the country. In such a situation, making a hypothetical assumption that a section of women is ‘abusing’ the law is a myth.

Moreover, in North India, many women stay in joint families that endorse hierarchal arrangement where the oldest male patriarch enjoys the authority and power and the new entrant is expected to comply without questioning. Hence, the family perpetuates unequal power relations to control the mobility of women and places restriction on their autonomy (Kandiyoti, 1998). Not many are allowed to take up jobs. The worker population ratio in both urban and rural areas for males is 55 percent, while it is 29 percent for females in rural areas and 14 percent in urban areas. The work-force participation rate in 2009–10 is 26.1 for females compared to 54.7 males in rural areas, and in the urban sector, it is 13.8 for females and 54.3 for males (NSS 64th Round, 2010). The proportion of regular wage/salaried employees was 9 percent for males and 4 percent for females in rural areas, whereas in urban areas, these figures are 42 percent and 38 percent, respectively. Almost 20.4 percent of women are employed in the organized sector in 2010. The females’ share of the total Central Government employment stood at merely 10 percent in 2009. Considerable differentials have been observed in the wage rates of men and women. Many women engaged in the informal sector are paid low wages. Further, those women who do unpaid care work at home are alienated as ‘housewives’ and their work is not accounted for. In such a society that burdens women with household responsibilities, with little or no involvement of men, to say that women enjoy privileges is uncalled for.

In a patriarchal society, it is the males who make decisions and control resources. Even when women are working, frequently, their mobility and earnings are controlled by men (Trivedi and Singh, 2014). The social norms administer stringent control over women’s being while allocating the major responsibilities of housework, care giving, and child rearing with no role in decision making. The NFHS-3 indicates that in the rural sector, only 26.1 percent of married women make decisions regarding obtaining health care for themselves, compared to 29.7 percent in urban areas. Moreover, only 7.6 percent of rural women and 10.4 percent of urban women have a say in purchasing a major household item. Merely 10 percent of rural women and 12.2 percent of urban women make decisions regarding visiting their families or relatives. For the country as a whole, 59.6 percent of women have no access to money.

Pande et al. (2016) observed that 79.9 percent of women reported not being allowed to visit the health center without permission from their husbands or in-laws. For many, access to basic hygiene facilities such as availing sanitary protection is difficult. Only 18 percent use sanitary pads whereas the rest use alternatives such as unsanitized cloth, ashes, husk, sand, newspaper, or dry cow dung during the periods and thus are at risk of suffering from reproductive tract infections (Sood, 2018). The NFHS-4 (2015–16) found that 58 percent of women (15–24 years) use a hygienic method of protection (mostly sanitary pads), a significant increase from the 12 percent

using pads in 2010 (Mahajan, 2019). In such a scenario, where most women are denied basic essential needs as well as their fundamental freedoms such as the right to make decisions about daily matters, to generalize that women are abusing the law seems unreal and unacceptable.

Also, the number of women-headed households is increasing. Women end up heading the households after the death of their husbands (three-fourths), or after they are divorced (60 percent), abandoned, or separated (two-thirds of the households). These may also be increasing with the rising migration or perhaps, surge in the number of nuclear families. The female-headed household may also grow due to the change in traditional occupational base, agricultural practices, or landholding patterns (Lingam, 1994). Uttar Pradesh, West Bengal, and Tamil Nadu have the highest number of female-headed households in the rural areas. The Socio-economic Caste Census (SECC) 2015 shows that a total of 23 million households are headed by females; out of those, 12.8 percent of rural households headed by females have a monthly income of less than Rs 5000/-. Overall, 14 million households are being considered under the deprivation category. The source of income in these households are generally manual labor, followed by cultivation. The dearth of data about such households and the lack of priority of these issues due to neglect of government policies and programs are the factors that need to be examined.

The demand for the housing rights of women has been going on for long. Several organizations are demanding women’s right to housing independent of male ownership and control or the joint *pattas*. The state has not yet taken any major step in this direction. However, world over, a few women own property and a minuscule number hold high-profile jobs.

As per a report by Credit Suisse (2019), only 15.2 percent of women account for corporate directors in India compared to the global average of 20.6. Also, this report indicates that India has the third-lowest rank with only 2 percent of women holding the position of CEO and second lowest (1 percent) when it comes to the position of CFO. The Securities and Exchange Board of India has made it mandatory for the companies to include at least one independent woman director on the board of the listed companies. However, till 6 April 2019, only 51 of the top 500 NSE listed companies have appointed the same (The Economic Times, 2020a).

Sexism is rampant within the system as evident from the situation that it took almost 39 years for a woman to allow to take the position as a judge in the Supreme Court when Justice Fatima Bee was appointed. Of the 229 judges appointed to Supreme Court since 1950 when it was established, only six were women till 2017 (Bhandare, 2017).

The share of women in political power is also less. Only 14 percent of women have been elected as members of Lok Sabha in the general elections held in 2019. A total of 617 women have been elected as Members of

Parliament since 1962 (PRS India, 2019) and 264 constituencies have never elected a woman representative at all. At the Panchayat level, out of 3 million elected representatives, 1.3 million are women (Ministry of Panchayati Raj, 2019).

In the USA too, only 32 percent of women are lawmakers, while Bangladesh has 21 percent of women making laws and policies. At the global level, more recently, comparison to the response to COVID-19 shows that the countries with female leaders suffer six times fewer deaths than countries led by male leaders. Women-led governments have placed a strong emphasis on social well-being and invested more on the health and environment (Deane, 2020). Despite this, only 7 percent make head of the state globally (Anderson, 2020).

Privileged men have occupied powerful positions for ages, yet they are seemingly insecure. Men yield authority as husbands and fathers in homes. They occupy top positions in the government, as politicians, bureaucrats, and judges, and as CEOs and managers in the business sector. Men hold power in the law enforcement agencies, enjoy benefits as priests in places of worships, hold leadership positions, and in all other spaces, there is an impenetrable presence of men. They make the majority of decisions, control resources, and dictate the ideologies at homes, in public spaces, in the political realm, in the communities, and almost in all the spheres of life about a range of issues including decisions about women’s mobility and their persona, yet they remain apprehensive and insecure and use violence to suppress and subjugate women. And when women raise their voices against violence, men label them as ‘liars’ and ‘disgruntled’ because by raising their voice, women are challenging the age-old patriarchal arrangement. Perhaps, any slightest deviation may alter the sociopolitical structure, and therefore, it is not tolerated.

Gender ranking

India ranks low in the gender equality index as the sociocultural milieu of the country is highly patriarchal, characterized by traditional gender norms, strong son preference, and differential gender power relations that favor males. The Thomas Reuter Foundation in its report named India as the most dangerous country and the worst nation in the world for women (Goldsmith and Beresford, 2018). The report was later rejected by the government and critiqued by many (Mehta, 2018). Yet the fact remains that violence against women is escalating. Denial of reality will not alter the vulnerable situations that arise because of the deeply rooted gender discrimination. The situation today is that India is falling behind in the ranking in most of the gender-related indexes, and in such times, to say that women are enjoying privileges by abusing law is a myth.

Law ignores all other forms of violence women face in homes

Family is a primary institution where a woman is exposed to violence and is socialized to deal with it either silently or through the negotiations. Even before a woman steps out of her house, where she may be discriminated on the basis of her caste, religion, or class and may be subjected to abuse because she is a poor, a Dalit, or a Muslim, home is the principal place where as a child, for the first time, she may either witness or be exposed to violence or discrimination. Violence in a patriarchal family is based on the ideology of repression. Females within the families are aborted; killed as infants; discriminated upon in terms of food, education, health, and other resources; forcefully married off at an early age; denied sexual and reproductive autonomy; face restrictions in terms of mobility or access to education or employment; coerced to uphold traditions; tortured; attacked; raped; forced to undergo abortions; sold; trafficked; killed for honor; hunted as witches; thrown out; burned alive; murdered; denied rights; and are abused in numerous other ways and yet are forced to remain silent. Women are abandoned into destitution and their labor is exploited with little or no value being attached to their work. Pre-puberty marriage, seclusion, and widow burning are methods deployed to control female sexuality.

It is reported that in 132 villages in Uttarkashi district, Uttarakhand, 216 boys have been born, but no girl was allowed to be born in three months (Kotnala, 2019). At other places, such as in Mewat, Haryana, thousands of women are sold and resold for sexual gratification and slavery to multiple husbands to combat the shortage of women and are forced to live a life worse than that of animals (Sharma S., 2016; Wallen, 2019). Polygamy is a norm followed in some villages among Hindu families where women are being forced to serve as sexual slaves to men (Singh, 2019). Violence and coercion along with notions of ‘family honor’ and ‘shame’ are often used to discipline women (Madhurima, 1996). Women are socially, culturally, and normatively victimized in hierarchical, undemocratic, and autocratic families (Rege, 2013). Besides, numerous studies show a range of customs, rituals, and practices in different communities that inflict violence and are not recognized by the law. For instance, in the *Sansi* tribal communities in Rajasthan, women are forced to undergo *Kukari ki rasam* (the thread ritual to detect the intact hymen of the bride), which is used by the groom’s family to extort money from the bride’s family (Bagchi, 2012). Other oppressive rituals and practices such as *paani ki dheej* (for testing the virginity of a woman by putting her in water till any of her relatives walked 100 steps) are being reinforced by the caste panchayats. These practices that uphold patriarchal norms are never reported or highlighted (Mathur, 2004). Often, men and women accept patriarchal norms that reinforce structural inequalities without questioning or critically analyzing them.

Violence permeates the everyday lives of women and has an adverse impact on their health and survival. However, all such forms of violence are excluded under the purview of the domestic violence law. The restricted interpretation of the term ‘cruelty in marriage’ fails to see the fact that women are discriminated, exploited, brutalized, or murdered both within natal or marital families besides being tortured by the larger kinship networks and are bound by socioeconomic as well as cultural compulsions from which escape is almost impossible. Much attention is being paid to the violence in public spaces. However, violence in homes is not being highlighted even though it provides the basis for bringing social transformations in relations between men and women.

Mismatch between the magnitude of violence women face and the reported cases

WHO (2013) reveals that every third woman faces violence; however, not all approach the courts with their complaints. Leaving an abusive relationship is not easy. A study conducted by the Centre for Social Research (2005) concluded that nearly five crore married women are victims of domestic violence and merely 1 out of 1,000 air their grievances. Another study observed that 89 percent did not seek help for the sake of family integrity, 70 percent feared being beaten again, and 49 percent felt that it would not improve their situation (Shrivastava and Shrivastava, 2013). Even in cases when they are facing severe violence, many remain silent for years and accept violence as a part of the ‘marital package’. Internal dynamics of the traditional family plays a significant role while constricting the bonds of affection and isolating women at a time of crisis (Agnihotri and Palriwala, 1993).

Several factors operate to determine a woman’s decision whether to raise her voice against violence. Perhaps, women are being socially conditioned to accept violence as a man’s entitlement, his sense of control to instill discipline, and expectations from women as wives, mothers, and as daughters-in-law. Women are made to believe that violence is a normal wear and tear of married life and are taught to bear the aggression silently. They are made to believe that men can get away with violence without accepting responsibility for their unacceptable behavior. Besides, many other reasons prevent women from voicing their grievance. For women, a sense of shame, stigma, and guilt along with the fear of reprisal, nonavailability of viable options outside the institution of marriage, refusal of the natal family to cooperate either by choice or because of socioeconomic compulsions, lack of awareness about rights, and isolation are additional factors that prevent them from seeking help. In case she walks out, she is pressurized to ‘go back’ and ‘save marriage’ or in case she is defiant, she has to find her own ways to manage her life as well as the lives of her children. With no support mechanism available, she may be compelled to

sink deep into poverty. Therefore, the majority of women who experience violence choose to remain silent about it. The traditional monotonous role of a female that is restricting and limiting and prevent her from expressing her emotions may lead to depression. All this becomes more tyrannical in the regressive societies that prioritize the family over the rights of an individual to lead a violence-free life.

The patrilocal arrangement where a woman is expected to move to her husband's house at the time of marriage clubbed with a patrilineal arrangement where identity and property rest with a man enhances the vulnerability of women. As a woman moves to the marital home, she finds herself bereft of any support and is at the mercy of her husband and his family. Multiple patriarchies operate to formulate traditions that hardly recognize the anxieties, frustrations, and resentments associated with the relocation of a girl into an unfamiliar situation in which going back is deemed as undesirable. The concept of permanency of asymmetrical, incongruent marital bond that places the husband on the higher pedestal degrades and dehumanizes women. This model is validated and propagated by the state apparatus, market, and religion. All these factors clubbed together to create an environment that silences the voices of women.

It is therefore not ironic that the NFHS-3 reveals that 54 percent of women and 51 percent of men agree that it is justifiable for a husband to beat his wife. The survey indicates that two out of every five women in the age group of 15 to 49 years reported having faced physical or sexual violence in their lifetime. Only one in four women who faced violence had sought help, whereas two out of three decided not to tell anyone or seek any help. Lately, NFHS-4 (2015–16) also reported similar results. NFHS-4 pointed out that 60 percent of men admitted that they had committed an act of violence against their wife at some point in their lives. Women reported physical violence, sexual abuse, emotional violence such as humiliation, insults, and threats besides experiencing hair being pulled or arms being twisted, and being pushed, shaken, or having something thrown at them. Twelve percent reported having been kicked, dragged, or beaten up, and 2 percent reported that their husbands tried to choke or burn them on purpose. Every third married woman who experienced violence reported physical injuries. Eight percent reported eye injuries, sprains, dislocations or burns, while six percent reported having deep wounds, broken bones, broken teeth, or any other serious injury. At least a quarter of urban poor women have faced violence during pregnancy. Yet only 14 percent have reported seeking help. Nearly nine out of ten women surveyed from urban poor areas who experienced physical or sexual violence have not sought help. The majority reached out to their own family (67 percent) or the husband's family (29 percent) followed by neighbors (20 percent) or friends (9 percent). In only less than 5 percent of the cases, the urban poor sought

help from the police or social organizations. A culture of silence around violence prevents women from speaking out against it and yet the courts ignore the sociocultural realities while adjudicating the cases. More specifically, in cases when a woman decides to seek assistance outside her family or community, several factors operate to determine whether she actually received justice. This includes availability of resources, legal assistance, attitude of police and courts, the operation of family ideology in the courtrooms, the social mindset, and support structures available besides her own courage and resilience (Nigam, 2019a).

Is it easy for disgruntled women to access justice?

Access to justice is a broad term that encompasses not only the number of litigants approaching the courts, the availability of services, or the number of pending cases, but it also implies making the court more fair, just, and accessible (MacDowell, 2015). Scholars claim that the legal service delivery that aims at challenging the dominating ideologies and transforming the subordinating systems is essential to achieve the goal of justice away from the concept of providing piecemeal assistance to disconnected individuals who cannot afford lawyers (Galanter, 2010). Access to justice, hence, broadly addresses the critical needs of the larger community and deals with the relevant discourse about subordination, operation of state power, and progressive law practices (Blasi, 2009). Goal 16 of the UN Sustainable Development Goals aims to provide ‘access to justice for all to build the effective, accountable and inclusive institution at all levels’. It targets promoting the rule of law, reducing corruption, developing accountable institutions, and ensuring public access to information.

However, in India, the legal system does not construe the concept of the access of the justice in its broader form. Because of the narrow conceptualization and slow reforms in terms of infrastructure, number of courts or police stations, lack of personnel, absence of training and capacity building of the staff, delays, bureaucratic hurdles, and more importantly the mindset, the system has failed to provide a space for challenging domination and subordination. The Law Commission (2004) in its 189th Report emphasized that access to justice is a basic right, yet common people are being denied justice because of various ills plaguing the system (Law Commission, 2014). The system lags behind in many aspects. It is poorly managed, outdated, overburdened, works with inadequate resources, and lacks efficiency as well as quality (Tata Trust, 2019). The situation is such that over the years, public faith has dwindled because the system has failed to maintain the rule of law and remained unsuccessful in delivering justice. The police, prisons, courts, and judiciary and legal aid—the system falters at each place.

How many women knock on the doors of the court?

Article 39A of the Constitution obligates the state to provide opportunities to secure justice irrespective of economic or other disabilities. Free legal aid for socially and economically vulnerable people has been introduced when the Legal Services Authorities Act, 1987 came into force. It constituted the National Legal Services Authority (NALSA) with the purpose of conducting legal awareness and legal literacy camps and of organizing Lok Adalats or people’s tribunals to encourage the settlement of disputes through arbitrations, conciliation, and out-of-court negotiations. The law is aimed at ensuring justice for all on the basis of equal opportunity. However, decades later, it is evident that this well-intentioned law is riddled with its own problems.

Currently, more than 2 crores cases are pending before district courts in the country (Anand, 2016); 24 percent of the cases are pending for more than five years while 2.3 million cases are pending for more than ten years. Average case pendency is five years at the subordinate level. At the level of High Courts, the case pendency is 4.3 years. The courts in several states take six years on average to settle a case. Considering the number of pending cases for trial, estimated figures indicate that it may require more than 8,521 judges in the next five years to clear the backlog (Abbas, 2019). About 18,200 judges are working across the country and 23 percent of sanctioned posts in judiciary are vacant. In prisons, about 33–38.5 percent of the posts are vacant as of 31 December 2016.

Judiciary remains a low priority when it comes to funding. A report claimed that India spent 0.1 percent in judiciary compared to 2 percent of GDP on defense (Agarwal, 2020). Low budget allocation has marred the system. In 2020–21, the Union Budget allocation to the autonomous bodies such as the Indian Law Institute and the NALSA is further cut to 117 crores compared to 159 crores in the previous year. For the creation of infrastructure facilities for the judiciary, the allocation is sharply reduced to 762 crores compared to 900 crores last year.

Per capita expenditure on the free legal aid is merely 75 paise per annum (as in 2017–18) when 80 percent of population are eligible for it. The Indian Justice Report (Tata Trust, 2019) shows that most of the states have failed to utilize the existing resources to augment the system. Only 15 out of 35 states and union territories have utilized at least 90 percent of the budget allocated for prisons. No states could utilize NALSA funds, though legal aid is an important mechanism to ensure justice. A report by the Institute for Economics and Peace in 2018 calculated that the inability of the state to deliver timely justice resulted in preventable violence that cost India as much as 9 percent of the GDP.

The conviction rate of all kinds of crime is merely 35 percent. Only one policeman is deployed for a population of 663 people while 22 percent of sanctioned posts are vacant (as of 1 January 2017). Only 6.4 percent of

police force in service have been provided training in the past five years. This implies that over 93 percent of the workforce are not trained to perform basic functions. The occupancy rate of Indian jails is 115 percent; 68 percent of jail inmates are awaiting investigation, inquiry, or trial. There are just 621 correctional staff across India’s 1,412 prisons.

From daunting procedures to corruption, legal aid remains a far-fetched dream. For litigants, getting legal aid is a problem. Even after they get a lawyer, fighting the case is not easy. Lawyers demand money, make women wait for long hours, and do not appear in courts for hearings (Johari, 2018). Further, the presence of counselors, protection officers, or other staff in the family courts without their orientation and training in court cultures put litigants at risk of losing their substantive rights. Family courts are, therefore, reinforcing subordination and expanding state’s powers by channeling individual conflicts in the public settings ‘that are laden with rituals and authoritarian symbolism’ and through ‘the legal reasoning itself which legitimizes the existing power hierarchical relationship’ (Gabel and Harris, 1982–83).

In fact, the legal system is geared to cater to those who are resourceful and privileged. Those on the margins are denied access for want of money or knowledge. Murthy (2016), while analyzing a portrait of an average litigant, estimated that out of 100 litigants, approximately 84 are men and 15 are women. Those belonging to the category of women, Dalits, tribals, and uneducated, earning less than one lakh per year or even less are spending 25 percent of their annual income on litigation. The stories of such litigants are not being discussed or highlighted. When the courts are overcrowded, dealing with huge pendency or backlog, and inaccessible to those who lack resources, making an assumption that the complaints of women are easily filed and they could access swift justice is out of context.

Court premises are typical male-dominated areas (Nigam, 2015b). Not many women are found inside the court premises—neither as judges nor as advocates or litigants. Women account for 28 percent in the lower judiciary, just 12 percent at the level of High Courts, and only 7 percent of 2.4 million police personnel. The National Judicial Data Grid accessed on 6 October 2019 shows that out of 8,878,279 civil cases, 1,460,440 are filed by women (16.4 percent). In 2016, out of 22,242,657 criminal cases, 1,547,298 are cases in which women are complainants (6.95 percent), and out of 31,119,773 cases, 3,007,737 cases are filed by women (9.6 percent). These numbers clearly indicate that not many women are approaching the courts as complainants compared to the number of men who litigate. When not many women are enjoying the privilege to access courts, to say that a few ‘disgruntled women’ are filing false cases is a myth.

Also, courts are not neutral spaces but are ridden with systemic and intersectional biases such that the women could not seek justice easily (Resnik, 1996). Courtrooms are sites of hostility and coercive state power where individuals may encounter unwanted interventions, lose rights, and suffer

tangible harms such as curtailment of their autonomy. More specifically, the Indian courtrooms are bureaucratic and hostile territories for women litigants.

Overall, it may be said that access to justice that is fair, quick, efficient, and affordable is the primary right of every citizen and is linked to the overall socioeconomic development of the country. However, the system has failed to address social and historic inequities both from within and outside. Rather the rollback in welfare provisions and dismantling rights while discursively delegitimizing women’s claims is devastating the progress made in a gender justice regime. Increasing the hostile interpretation of laws and policies where anti-gender equality positions are negatively upheld is hampering the progress in women’s rights. Instead of punishing the batterer or deterring the crime, the androcentric state while colluding with men blames the victims. The state in the process evades addressing the situation of power imbalance within the family or the society. The seriousness of the crime is negated and violence is trivialized when women are being coercively compelled to arrive at the settlement with the accused.

The Constitution imagines the creation of a just, equitable, and equal social order. However, the concept of access to justice does not consider factors such as the inaccessibility of the system or the financial burden it places on the ordinary litigants. In such a drastic situation, it is urgent to repair and overhaul the system to improve its efficiency and effectiveness. Instead of focusing on the ills plaguing the system, the state is paying much attention on finding the faults with the most vulnerable population.

Analyzing the context in which a complaint is filed

An erroneous common perception is that women are eager to approach the police on the slightest pretext, and therefore, the courts are flooded with cases. It is alleged that in a ‘spur of the moment’, a woman rushed to the police station. What is ignored is the fact that women silently bear the violence for years and utilize all available channels before contacting the police stations or the courts. The analysis by women’s organizations points out that cases are not registered easily or at the first instance (Singh, 2015). Often the courts disregard the trauma the women undergo. What is ignored in this fallacious line of argument is the fact that it is not easy for a woman to rush to the police station or to the court to lodge a complaint. First of all, a woman may take years to make such a decision and second, even once this decision is made, she may find it difficult to walk out of the marital relationship because of various reasons mentioned earlier. Women lodge a formal complaint when in despair and use the law as the last resort after exhausting all possible channels, when left with no other option (Humsafar, 2014).

Even when they pick up the courage to enter the police station to file a complaint, gender biases, corruption, and inefficiency hinder them from doing so (Singh, 2015). Research has shown that registering a complaint under 498A is a monumental task for a woman (Palkar, 2013). Sharing one’s private life is not easy. Women spend years mulling over the issue. Embarrassment, stigma, and guilt in sharing one’s private life prevent many from voicing their concerns. A woman knows that she may be further tortured and her life may be endangered in case the police fail to act swiftly and sternly. Moreover, the individual subjective biases of the policemen come into play (Singh, 2013). Bureaucratic hurdles and patriarchal mindset add up to hinder access to justice.

Stigma and wrath women face when they complain against violent husbands

The binary created by the categorizing ‘disgruntled women’ and the ‘genuine complainants’ is problematic because it encourages alienation and otherization. This argument portrays the complainants as ‘Other’. This rhetoric obscures an obsessive focus on the stereotype that a ‘good woman’ does not complain while deliberately silencing the women’s voices. Those who dare to walk out of marriage are seen as deviant. Nonconforming women who exhibit the audacity to complain are portrayed as ‘bad’, are stigmatized, and face wrath in many forms. No provisions are being made to support or assist them. Marriage is construed as an institution beyond which existence of women is not accepted or tolerated.

Economically, legally, or socially, ‘disgruntled women’ are not in an advantageous position in case the marriage breaks up. They neither receive any economic benefit by filing the case, nor are their rights being protected by the law or the society. In fact, women end up being beleaguered, dispossessed, and deprived of their dignity, respect, status, resources, and ‘advantages’ in the process. No sensible person would go to the extent of being dispossessed of her shelter, being deprived of her assets, or being denied economic or social security unless one faces extreme violence. Also, a survivor is compelled to face a *double jeopardy*—one in handling violence at home and helping herself and her kids to come out of the turbulent phase and second, she faces further troubles because of the attitude of the kin, police, courts, and society that ‘condemn’ the survivor for raising her voice. These factors are not considered while adjudicating the cases. Till the time the case is adjudicated, women are compelled to run around from pillar to post. Children are used as a ploy by the batterers to emotionally exploit women. Hence, instead of providing any support, the legal system ends up re-victimizing the victims.

Are educated and elite women misusing the law?

Another hypothetical argument raised is that educated and elite women use 498A to harass ‘innocent’ husbands. However, this is an illusory opinion not authenticated by facts, data, or research. Misogyny sees women’s education and employment of a woman with resentment because she may raise questions and may not be controlled and disciplined easily. This is not new. Historically, restrictions have been placed on women governing their attires, choices, necessities, and ways of leading their life and those who resist are penalized. Authoritarian regimes across the world want to control women’s bodies, their dressing, their mobility, and their sense of self. Malala Yousafzai was shot because her crime was she loves education (Kristof, 2012). Her haters maligned her as an ‘agent’ and a ‘traitor’ propagating anti-Islamic agenda and a ‘Western puppet’ while influential men rebutted her voice (Shah, 2015). Similarly, the *khap* panchayats in UP banned jeans and mobiles for girls claiming that it is ‘ruining the culture’ (Deccan Herald, 2018; Foujdar, 2017). More recently, many young women such as Safoora Zargar, Devangana Kalita, and Ishrat Jahan who protested against the citizenship law have been arrested, and an outrage has been generated when Greta Thunberg, a young climate activist, Rihanna, a popstar, Meena Harris among others such as Disha Ravi, Nodeep Kaur, and Nikita Jacob, tweeted in support of farmers’ protest (Mohan and Dwivedi, 2021). From the Unnao rape case to the Kathua gang rape case, all are examples of the way misogyny operates in communities and societies. The TERI sexual harassment case (Roy, 2016) and the SLAPP suit filed by the former Union Minister against a journalist (Harlankar, 2018) indicate the way the law is deployed by the powerful as a tool against women to silence their voice.

In her thesis *A Vindication of the Rights of Women*, Wollstonecraft (1792) wrote that the conception of femininity is defined primarily by the ability to arouse the male desire. She elucidates that this conceptualization is meant to ‘deprive us of souls and insinuate that we are beings only designed by sweet attractive grace, and docile blind obedience, to gratify the sense of man’. Thus, the world over, a woman who cannot fit into the patriarchal norms, does not accept slavery, or refuses to become an object or defies the norms is branded as vindictive and a liar. The courts use the stereotypical lens to construe women as revengeful when women could not ‘fit in’.

Considering such sexist culture in which the voice of women is throttled at each and every step, where men in powerful positions abuse their power to silence women, the hypothetical assumption that elite women are misusing the law hardly makes sense. The vast majority of complainants are denied their basic right to education and not many are gainfully employed to afford a lawyer or to pay the cost of litigation. Many are surviving on the financial assistance provided by their parents or other family members. Considering the emotional and mental state of the woman who has faced

violence, imagining that she is scheming to ‘take revenge’ is a proposition that is hard to believe. In a country where women are conditioned to accept their husbands as ‘Master’ or a ‘Lord’, where women are made to believe that their actions will be scrutinized for any invocation of wrong, to blindly state that women will misuse a law is a myth.

Why a bride may become vindictive after marriage

Patrilocal marriage in a traditional setup is a rigid institution that involves heaps of expectations and loads of responsibilities. Being a new entry in her marital home, a bride is expected to be controlled by and is dependent on other adults in the household (Jejeebhoy and Sathar, 2001). Consequently, marrying in a joint family curbs woman’s autonomy, besides her losing control over material resources (Visaria, 1999). The large sociocultural machinery surrounding family works impeccably in favor of men reinforcing the entrenched stereotypes while reiterating the traditional power relations. The concept of wifehood is shaped by the virtues such as absolute obedience, compliance, and service to her husband and the in-laws. A ‘good’ woman follows the ‘*maryada*’ or the social boundaries blindly, while for a man no such boundaries are being set that could contain his violence. The system provides immunity to the batterer whereas unreasonable expectations are being projected upon the woman.

In such a context, without any investigation, labeling the woman as ‘vindictive’ is a hoax. It does not take into account the reason as to why a bride becomes so vindictive within a short period of stay in her matrimonial home. It may be because 1) she is not accepted or that she is not feeling comfortable; 2) she is being harassed, taunted, abused for varied reasons; or 3) because the conjugal family is making coercive demands, or there could be any other reason that makes her vengeful that she walks out of that relationship. This needs to be analyzed on a case-to-case basis. There is a need to ascertain whether it is a mutual dispute that arose between the parties that becomes so hateful that a woman files a complaint or whether it is because the man as a husband could not tolerate that a woman is raising her voice and challenging the familial authority. Making generalized assumptions that all women who complain are vindictive without any supporting evidence is not a rational way to address the situation.

The overreaction to the ‘misuse of law’ ignores the realities of a woman’s life. Perhaps, questions need to be raised about the way the man acts vindictively and suspects the wife’s fidelity, character, and chastity. It is with the vindictive attitude that men blame women, paint them as vile, and commit atrocities such as restricting the mobility of women, controlling their access to resources, and putting numerous restrictions on them as wives, daughters, and sisters. Additionally, this vindication becomes severe when a wife dares to raise her voice. Assumptions are therefore raised when she

transgresses the line of control posed by the social norms. In such a condition, one has to examine the situational context that compels women to seek ‘revenge’. These are significant issues that require attention before making assumptions.

Is domestic violence a ‘Women Only’ problem?

Victim blaming is an excuse that is often utilized to justify violence. Reasons such as social or psychological problems, or that ‘she must have done something wrong to provoke her husband’, her nagging behavior, her cooking, not doing household chores, disobedience, her character, or that she couldn’t bear a child—all are used to portray a woman as a culprit who needs to be ‘chastised’, ‘disciplined’, and ‘controlled’. What is ignored in this argument is a woman’s identity as a human being, her dignity, and her self-respect. Society or the law does not blame a man for his wrongs but uses a different social or a moral parameter to evaluate a woman’s image, her reproductive capacity, her ability to do household work, her integrity, and her character. An icon of a perfect woman as a wife and as a mother is created, idolized, and propagated by the media as well as society and a woman is expected to fit into this description.

Women are projected as weak, liars, and intuitive

Most of the verdicts pronounced by the courts project women as liars, distrustful, infantile, irrational, weak, and emotional beings who use the law for vindictive purposes, whereas the abusers are projected as innocent, respectful, law abiding, reputable, pitiable, and remorseful. Questions are being raised about her role performance, her mental health, her attitude, and so on. Mudslinging a woman is easier when she complains. Entrenched misogynist insults are being used to suppress voices. The law discredits and disregards the women’s experiences of violence and utilizes codified patriarchal presumptions to filter women’s claims while presuming men as innocent. Not only in India, but even in Western countries, it has been observed that the law has been treating women as unworthy to make decisions for long (Jones, 2000; Stoeve, 2013). The testimonies of women are discredited in the courts (Fricker, 2007). Victims are falsely accused of infidelity or of other vices, including their emotional state or mental health in order to diminish their credibility (Watson and Ancis, 2013). Insulting and labeling women who raise their voices accomplish two goals. First, it defeats the immediate threat and second, it sets an example for others who wish to follow unruly women’s footsteps. Nevertheless, the narratives of women being liars do not sync in with the living realities. The patriarchal logic fails to see the ambiguities in their lives. Also, battered women are not the ‘perfect victims’. They are human beings with their own failings and do not necessarily

invite sympathy whereas the batterers are persuasive and charming (Bancroft and Silverman, 2002). Further, domestic violence is an ‘ongoing’ abuse in which a victim may seek help multiple times. Yet the service providers and the society stigmatize the victims who continuously request support.

Domestic violence is not a conflict between a mother-in-law and a daughter-in-law

By evoking devastating arguments such as ‘violence occurs because of women’ and by dubbing wife battering as a ‘women’s problem’, the patriarchy often pits two women who are victims of socioeconomic compulsions in a male-dominated society. The argument negates the role of a man and is made without examining the power dynamics that operates within households. It feeds into patriarchy by reinforcing the male power and colludes with the male interest of oppressing women within the families (Gangoli, 2007). Men are absolved completely from the crimes they perpetrate.

This argument ignores the social hierarchies that operate within the household (Chakravarti, 1993). It overlooks the fact that women, given no economic or social independence in a patriarchal family, derive their power solely from men—be it as his mother or as his wife. The power struggle between two women in such a structure therefore becomes inevitable (Gangoli and Rew, 2011). The common assumption that is wrongly made is that ‘a woman is another women’s worst enemy’ ignores the operation of ‘classic’ patriarchy in which violence is explained in terms of a ‘patriarchal bargain’ (Kandiyoti, 1988).

A mother-in-law by virtue of her years of marriage enjoys an authoritative position in comparison to a new bride who is conferred a subordinate role and status in her marital home. This authority creates gender hierarchies within the families (Fernandez, 1997). A mother-in-law acts as a carrier of culture, legitimizing and preserving patriarchy while training young women to accept an inferior position within the household. She is entrusted with the task of orienting, supervising, and controlling the new entrant and to teach her the traditions of the family. Also, a mother-in-law often may feel socially and financially insecure when a bride enters the household and because of the internalization of patriarchy, she may abuse her daughter-in-law for the lust of power or for the desire of subordination of the weak.

Moreover, in such setups, where the male is seen as a bread earner, the older woman feels threatened by the younger woman, as she may lose her proximity with her son. Kishwar (1997) noted that an ideal family venerates the mother-son relationship where a woman’s status as a mother is considered more important than that of a wife who represents a sexualized image of a woman and therefore deserves less respect. This power struggle does not take place in the relationship between a father-in-law and a son-in-law because their spheres of operation are different from each other by

the virtue of the fact that they live in separate households (Menon, 2012). Moreover, in a patriarchal setup, a mother trains her daughter to accept patriarchy through the rigid social control. Yet such authority is accepted as normal and desirable; no voices are raised when daughters are abused within the family.

Nevertheless, women in an oppressive structure do exhibit resistance against power in one way or the other—they either refuel patriarchy or rebel against it. Both are the victims of patriarchy, yet those who accept it either live in denial of oppression or become partners and collaborators with patriarchy, and those who dare to rebel against it are labeled as ‘destroyers of a family’. Mies (1986) sees women as active collaborators of the system that dominates them. Women internalize the hegemonic code of the system that allocates them secondary status and transmit these traditions actively. There are women who enjoy proximity to power and act as agents of patriarchy. Millet (1970) in her thesis *Sexual Politics* explained that patriarchy intentionally pits one woman against another. She writes,

One of the chief effects of class within patriarchy is to set one woman against another, in the past creating a lively antagonism between a whore and a matron, and in the present between a career woman and a housewife. One envies the other, her ‘security’ and prestige, while envied yearns beyond the confines of respectability for what she takes to be the other’s freedom, adventure and contact with the great world. Through the multiple advantages of the double standards, the male participates in both the world, empowered by his superior social and economic resources to play the estranged women as against each other as rival.

(p. 38)

Patriarchy, hence, creates binaries and further male chauvinism while mobilizing sexual hierarchy to ‘punish the female’. Dworkin (1983) while explaining the reasons for women collaborating with conservative men who limit their freedom argued that the right-wing women live in the same world of sex-oppression, but they see that marriage provides them with protection from rape and economic exploitation of the marketplace, and reproduction gives them value and respect even if it means increasing their own vulnerability to reproductive exploitation. It is therefore necessary to reexamine the power relations within the family and to transform the social institution while economically empowering women, thus reducing their dependence on marriage.

Who is a family breaker?

The backlash wrongly blames feminism and labels the complainants or those who attempt to stop violence as ‘family breakers’ rather than preventing

men to commit the act of abuse. By doing so, abusive men zealously guard their privileges. Any voices about women’s rights are seen to threaten the patriarchal empire. The roots and the foundations of patriarchy shake when women demand for their rightful claims. The male ego is endangered when women raise their concerns.

Brown (1995) explained that when a woman tries to inject rights into a family, she is seen as the one who is ‘corrupting the domain of love, need and reciprocity’ with the language of contract and rights, thus disrupting the family. This mythical approach sees family as a ‘nonviolent sanctuary mutually cherished by all its inhabitants’. It ignores the position of women as subordinated subjects who within the family are challenging oppression and threat. Therefore, ‘the desire for rights on part of women or children disrupts the myth of paternalism and protectionism that governs familial patriarchalism’. (p. 159)

Instead of putting the onus on the offender husbands for disturbing the peace in a family, those who argue to provide for women’s safety have been incorrectly termed as ‘family breakers’. Those working for the cause of women are being projected as man haters. The power politics works to censure women who constructively aim to prioritize the rights of women. In fact, as it has rightly been said that in a male dominated society,

the women’s assertion of citizen’s claims to participate as equals in the political and development process put them in direct confrontation with ‘the forces of conservatism and reaction’ while ‘harking back on traditions and culture’ and the positing of images which emphasize women’s reproductive role as the only natural, historical one.

(Agnihotri and Mazumdar, 1995)

Straightforward attacks are being made to attempt to rescind women’s social and political gains while reasserting medieval forms of the patriarchal structures. Women’s projects that demand equality are being cleverly co-opted and distorted. Mazumdar (2000) noted that

there exists an extraordinary lack of sensitivity among the law making and enforcement agencies, and public opinion, especially within the upper and middle classes—both urban and rural. On the issue of domestic violence, we were accused by many of ‘wanting to break up the family’. Even some older women’s groups were critical and thought we were carrying the debates and agitations too far.

More specifically, in India, a chart of women’s rights progress throughout history shows how any small progress made is being pushed back with double force. So, every time a law is enacted, there are judgments where the law

is interpreted to push back the women into the trap of regressive violence. Every time women attempt to seek freedom from violence, the culture of violence with impunity pulls them back. Every time women raise concerns about violence at homes, they are being told ‘to adjust and to compromise’. Every time a woman says that violence is harming herself and her children, she is told to bear it, and worse is she is coerced to accept more violence. Every time a woman approaches the court, she is forced to examine her own behavior and repeatedly told that the problem lies with her. No one dares to tell the violent men to stop inflicting harm or to alter their behavior and mend their attitude. To blame feminism for breaking the family is to miss the entire point of feminism. Feminism is a simple concept to protect half the population from violence and to emphasize that they deserve rights and opportunities just as the other half. Therefore, instead of demonizing women, it is necessary to promote the democratic family norms and to alter men’s violent behavior.

Law needs to oppose patriarchal oppression

Domestic violence cannot be dismissed as a male versus a female issue; rather, it is a struggle against patriarchy that unduly entitle privileged men while relegating women to a secondary position. MacKinnon (2006a, 2006b) while referring to Aristotle’s dictum of equality that entails ‘*treating likes alike, unlikes unlike*’, or the concept of sameness and difference, opined that the concept of formal equality cannot be made applicable in situations in which women are not seen as full humans. She argued that systemic inequalities, subordination, and social inferiorities cannot be rationalized as differences. Formal equality principles, therefore, cannot be applied to situations of internalized oppression or in hierarchical relationships. The goal of law is not to enforce formal equality but to dismantle the hierarchical arrangement and to challenge subordination.

More so, in a male-dominated society, violence has deeper dimensions that lie in the discriminatory culture. While any individual batterer may imagine that he is operating on his own, he is not acting alone; rather, he derives power from the larger social order that is discriminatory (McIntyre et al., 2000). A batterer is supported by the hierarchical order that provides him extra power and status to exercise control over the vulnerable. The same hierarchies and inequalities keep a woman victim in a vulnerable position by disempowering her socially, economically, and politically. The laws that refuse to restrain him also treat her as a temporarily damaged good who can be somehow pushed back to the violent situation again till she dies. The overt and implicit collusion of other men besides ideological and institutional support enables a man to assault a woman and get away with it.

Media, the judiciary, and all other institutions dominated by men favor privileged men and twist the realities of violence to portray men as ‘innocent’.

And women raising concerns about violence are seen by men probably as threats to their authority and control. By reacting furiously, men may seek to reclaim their lost power. Patriarchy in nexus with toxic masculinity is encouraged by the society that makes men feel entitled to dominate. The need therefore is to examine the symbiosis between misogyny, patriarchy, male privileges, and supremacy. A movement against family violence is not a ‘men’s versus women’s’ issue; rather, it is against patriarchy, against misuse of power and the position of authority by men over women and children.

A piecemeal response to the age-old problem is not going to resolve this issue. It is essential to support a violence-free environment within homes and outside in public places. The hypothesis that the law is misused ignores the fact that the law has been formulated to protect women from violence and to transform the structural, systemic, historical, and cultural roots of family violence. The purpose of the law is to address the system of abuse of power against the powerless. At a broader level, the aim of the law is to contest patriarchy within homes, eliminate violence, and create democratic family structures. The veil of family cannot be used to protect the abusers. Wife battering involves a complex situation. The purpose of the law is to act against the oppression women face and to transform the behavior of perpetrators. It has been stated that,

To see domestic violence in terms of man woman relationship would be to miss the essence of the problem, which is the institutionalized nature of female second class citizenship.

(Women Speak, 2000)

The argument of the ‘Visible Women’

‘Suddenly “women” are everywhere’, provocatively suggested Tharu and Niranjana (1994) in their pioneering essay that raised questions about the ways the ‘new women’ are portrayed as feminists in the events that took place during the 1980s and 1990s. During this period, women came to the forefront during the anti-Mandal agitation against the reservation of Other Backward Classes (OBCs) in the government service, in the promotion of contraceptives in family planning programs, in the emergence of a militant female figure in the women’s wing of the *Rashtriya Swayamsevak Sangh* (RSS) during the late 1980s, and in the anti-arrack struggles in the coastal Andhra Pradesh in the early 1990s. The presence of women in public spaces is a big question that has occupied the central attention in the discourse pertaining to violence against women. This visibility of women in public spaces is construed as problematic in the patriarchal society that ensures that women are confined to private spaces (Tharu and Niranjana, 1994; Phadke et al., 2011). The popular myths against women’s presence in public resurfaced during Nirbhaya’s agitation in December 2012 when 23-year-old

Jyoti Singh was brutally gang-raped in a moving bus in Delhi. Majority of people demanded ensuring the protection of upper caste Hindu women from the ‘predators’ who are ‘the poor lower caste or Muslim men’. However, the presence of women in the public arena has increased during the recent years where the proactive participation of women from various backgrounds in protests against the Citizenship Amendment Act in 2019 and in 2020 by the women farmers who participated in the dissent against the farm laws exhibit women’s agency and voice in a deeply misogynist society. Those in power took steps to malign the image of the protestors, yet the determination and grit of the protestors could not be dampened. Apart from the fact of the fate of the protests, the courageous steps taken by the women show their resilience against the majoritarian Hindu state that has historically tried to push the regressive ideology.

Hence, it may be said that the concept of sex-based egalitarianism is not tolerated. Gender-biased norms drive the institution and individual consciousness. More specifically, the police stations and the courts, for ages, have been male-dominated territories; therefore, the presence of women as lawyers, judges, and litigants, even in small numbers, appear as a bigger challenge. When women demand their rights, they are seen as challenging the power bastion. In fact, women as lawyers and judges make men in power insecure and uncomfortable. The cases of sexual harassment are being reported from court premises. It is therefore necessary to reassess and reconsider the existing myths and gender stereotypes.

Are the courts doubting their own competence?

Technically, each case in the legal system goes through a process of trial. Adjudication ranges from the registration of the FIR to the preparation of chargesheet, investigation, evidence, recording the statements of the parties, medical reports, cross examination, and so on. At every stage of the proceedings, the lawyers, judges, and court staff—all play a critical role of drafting, pleading, producing a list of witnesses, recording statements, and so on. Every complaint is scrutinized, and it is then decided if the accused is guilty or not. A complaint, whether it is false or genuine, is ascertained during these stages of proceedings. When the courts make generalized statements about dismissing the ‘false complaints’ filed, in a way they are making observations about their own competence and efficiency to filter out genuine complaints from false ones. Therefore, because of this inadequacy, it is assumed that all women complaining should be penalized. By raising the binary of the ‘genuine’ or ‘false’ complaints merely on the basis of hypothetical assumptions, the courts are projecting that complainants are smarter to file false cases than the entire system put together.

Overall, it may be said that the state cannot afford to fall into the trap of the malicious propaganda that is being deployed to paint women as liars

or vindictive, which is diverting the attention from the real issues such as women’s need for security, safety, and bodily integrity. The access to justice is problematic and various ills plague the system. The state needs to examine and rectify the real problems affecting the system that range from lack of resources, training, infrastructure, and personnel, to corruption, subjectivities, among others that affect the efficiency and effectiveness of justice.

DOMESTIC VIOLENCE, PATRIARCHAL TERRORISM, AND THE LAW

Mathura, with all her predicaments, has been fortunate that her problem reached the High Court and your Court. But there are millions of Mathuras in whose situations even the first information reports are not filed, medical investigations are not made in time, who have no access to legal services at any level and who rarely have the privilege of vocal community support for their plight. . . . Must illiterate, labouring, politically mute Mathuras of India be continually condemned to their pre-constitutional Indian fate?

(Baxi et al., An Open Letter to the Chief
Justice of India, 1979)

Violence implies not only assault of the body, mind, or soul, but it also occurs when the conditions are being enabled to facilitate it and when the system—the state and the society—excuses it. One of the arguments raised by the state is that domestic violence law in unleashing ‘legal terrorism’. This chapter highlights that the law is enacted to respond to the violence or the ‘patriarchal terrorism’ that takes place inside the home. The brutal violence women face is dehumanizing and robs them of their dignity. The fact that patriarchal terrorism is unleashed in homes by violent men is evident in the statistics pertaining to escalating cases of cruelty and dowry deaths. At the same time, the conviction rate is low as the police are hardly making arrest. Investigation is not being conducted properly. Mandatory mediation is being conducted at every stage of the proceedings. The state is negating serious violence as a dispute. To say that the law is unleashing terrorism reflects on the fragilities and insecurities of those fearful of the rule of law. The permissiveness and omissions by the state, laws, and the institutions are promoting the culture of violence with impunity. Moreover, the available data are twisted to create a false hype that jails are filled with *saas*, *nanands*, and the innocent relatives of the husband. Analysis of statistics from prison shows the contrary. This chapter examines the argument that domestic

violence laws are implemented to deny justice to the battered women and to protect male privileges.

Patriarchal terrorism: Realities of women's lives

Tushara, 27 years old, weighed 20 kgs when she was brought in dead in a hospital in Kollam. She was starved to death by her in-laws for dowry. Her autopsy report reveals that she was beaten and tortured before she died (Mantri and Ram, 2019).

The body of Vandana, daughter of a sugarcane laborer Baburao Rathore in Beed, Maharashtra, was found in a well on 9 September 2020. She got married a few months ago. The groom's family demanded Rs 5 lakhs to purchase a tractor. Vandana has been calling her parents to arrange for money as her in-laws have been torturing her. Baburao explained that because of the lockdown imposed due to COVID-19, the market situation is bad and that he will arrange for money, but this could not save Vandana (Web Odi-sha, 2020).

Kalaiselvi, 27 years old and hailing from Salem in Tamil Nadu, was harassed for dowry by her husband and her mother-in-law since day one of her marriage. She went to the police station multiple times, but every time she was simply asked to undergo counseling and was sent back to her husband's house. She filed two complaints with the police, but none was attended to. Meanwhile, her physical and mental abuse continued. No one helped her. She was allegedly set on fire by her husband and his mother in October 2019 (Mantri and Ram, 2019).

Pratyusha, 21 years old, married Ramesh three years back. During the marriage, her family gave 5 lakh cash, 10 tola gold, and one acre of land as dowry. Two years ago, she gave birth to a girl child. A few months later, her husband started harassing her for additional dowry. His parents also joined him. She hanged herself to death on 25 September 2020 (The Indian Express, 2020a).

Priya, a 24-year-old software engineer, was five months pregnant when she ended her life on 22 October 2020 at her house in Hyderabad. She married her relative Sravan Kumar in June 2020. Sravan runs a gym. He and Priya were in love for several years. According to the police, in 2016, Priya married another man, but after six months she divorced him. Subsequently, she and Sravan got married. Her mother alleged that Priya committed suicide due to dowry harassment. At the time of the wedding, they gave Rs 2 lakh cash and 12 tola gold but Sravan and his mother were demanding an additional Rs 5 lakh (The Times of India, 2020b).

Neha got married to Pramod two years back. She was eight months pregnant when she was beaten to death by her husband and in-laws for dowry on 23 September 2020 in Moradabad. Her family alleged that from the

very beginning of her marriage, Pramod and his family used to assault her for dowry. When her condition deteriorated, they admitted her in a private hospital. She died during treatment (Khan M., 2020).

Jyoti, 16 years old, got married to Vinay Dhawan, a cable television operator who lived in Rajouri Garden, Delhi, in the year 1995. Jyoti was tortured for dowry. In 1998, she lodged a complaint with the CAW Cell. The cell called both parties and a compromise was arrived at wherein Vinay and his parents agreed that they would not ill-treat Jyoti. However, cruelty escalated and between January and March 1999, Vinay clicked nude photos of Jyoti to threaten her. Dhawan and his parents moved 20-year-old frail Jyoti to a tiny room with no toilet facility and only a small ventilation, a kilometer away. She was fed only once a day. Beating and ill-treatment continued. Meanwhile, Vinay applied for divorce. But because of the fear that Jyoti may die, Vinay's lawyer informed Jyoti's mother about the proceedings. Finally, after much efforts, Jyoti's husband, her mother-in-law, and brother-in-law were arrested on 16 May 2000 (Das and Malviya, 2000). When Jyoti was rescued, her brother had to carry her in his arms because she was too weak to walk on her own. In this case, Dhawan exploited Jyoti's vulnerable situation. The process to arrive at the *samjhauta* harmed Jyoti as she was brutally tortured while her husband took undue advantage of the mediation to absolve himself of his accountability for his brutal actions. The then Assistant Commissioner of Police (ACP) CAW Cell, Suman Nalwa, who dealt with this matter, highlighted during her interview the fact that women are hardly aware of their legal rights and that there are no rehabilitation homes to support battered women. Women are taught to be docile and subservient to the extent that 'adjustment' to violence is the only solution they could think of even when they are at the verge of dying, which was what happened to Jyoti and numerous other women.

The bodies of 25-year-old Soni Devi, her 5-year-old daughter Samriddhi, and her 3-year-old son Samdarshi were found dumped in a roadside well beside National Highway 75. The accused, schoolteacher Ashish Pandey, has filed a missing complaint. However, Devi's father lodged a complaint against Pandey, his parents, and his older brother, claiming that they used to torture his daughter ever since their marriage in 2014 and demanded land. Pandey was arrested for strangulating his wife and two children (Outlook, 2020b).

In Rishipur village in Panipat, Haryana, a 35-year-old woman was locked inside a toilet in miserable conditions for one and a half years by her husband, Naresh Kumar. She is a mother of three children, rescued by the team of District WCD on 10 October 2020. She was too weak to walk on her own at the time of the rescue. Her husband claimed that she is mentally unstable, but the officer who saved her said that the victim could identify all her family members and replied to the questions asked by the rescue team. The case is under investigation (The Hindustan Times, 2020).

Tushara, Vandana, Kalaiselvi, Pratyusha, Priya, Neha, Jyoti, Soni Devi, and many more women have been facing the horrors of patriarchy every day in their homes. The misogyny is unleashing terrorism against women in a barbaric manner. These cases show how women are brutally tortured, terrorized, burned, and killed by the batterers and their families. During the Holocaust, the Nazi regime constructed the concentration camps to terminate Jews. However, in all the previously mentioned cases, ‘homes’—supposedly a place for security—were turned into torture chambers for the women.

Fanon (1963), while explaining colonialism, states that the settlers and the ruling state both used violence against marginalized natives while maintaining the culture of inequality and exclusion. Similarly, in the situation of domestic violence, both the family and the state endorse brutalities against women to preserve the hierarchy within the family. The society acts in an inert manner and colludes with the oppressor, as it turns deaf to screams of women who are being tortured or burned alive. Therefore, the state, the society, and the law are complicit in dehumanizing women and denying them personhood.

Marriage is not a license to rape, abuse, or kill women. When a woman marries, she does not consent to violence; yet the deeply fractured society normalizes violence in marriage and grants immunity to the batterers. This has serious implications for women’s safety and integrity. The legal system, enmeshed with technicalities and procedural nitty gritty, overlooks the sufferings of women. This compounds the women’s distrust toward the law enforcement and may compel many to remain silent. Men torture and murder women with impunity knowing that neither the women’s family nor the police and the courts will hear women’s voices. The vicious circle of violence never ends.

Factors that combine to unleash patriarchal terrorism against women

The previous few cases show how the complex factors work in tandem against women to prevent them from walking out of the abusive marriage. The *sociocultural factors* such as nonavailability of options to stay out of marriage and absence of support compel many to face extreme brutalities continuously for years. In the patriarchal society in which a woman is considered ‘*paraya dhan*’ (a daughter is being alienated from the natal family on the belief that she belongs to her husband’s house), parents hardly support their married daughters. Even when a girl faces extreme abuse in her matrimonial home, she is coercively being sent back to the same violent house on the pretext that ‘one day the problems will disappear’. Once a woman’s natal family gives in to dowry demands made by the groom and sends her back with gifts and money, this transaction does not protect her. Rather, it

enhances her vulnerability to further harassment because the groom's family may demand more. Hence, the natal family becomes complicit in the process by putting a temporary band aid on a broken relationship rather than finding a permanent solution to the problem. Sending her back to a violent house implies that violence is normal and not only tolerated but can be used as a tool to negotiate for more demands.

Social stigma, pressure of upholding patriarchal structures, family dynamics, and socioeconomic compulsions are some of the reasons that parents don't support their daughters even if they face brutal torture in their conjugal homes. Additionally, the brothers may not support married sisters because once they are back to their natal homes, the fear is that the sisters may demand their share in the parental property. Hence, a woman's natal family may deprive her of the required support to file a complaint. Without support, a woman feels scared to take legal action. These *socioeconomic factors* add greater risk to the lives of women.

The dowry law in no way prohibited coercive demands; rather, the law legitimizes the transactions during the marriage. Coercive demands of expensive gifts and jewelry are made not only before or during the marriage, but also after the marriage, on the pretext of festivals, pregnancy, childbirth, for business, and so on. The process is never-ending. The groom's family is not penalized and enjoys legal immunity. The complexity of the legal process or *legal factors* adds to a woman's burden, who being emotionally drained may face difficulty in coping. The fear of being dismissed by the police and courts make women wary of approaching the flawed system marred with corruption and biases. These combined factors make the position of the bride vulnerable and unleash patriarchal terrorism against a woman, where her natal and matrimonial family, the police, the judiciary, and the state all become complicit in the process. These nuances are not considered when the cases are being adjudicated in the courts.

Is the law unleashing legal terrorism or is domestic violence in itself a terrorism?

In *Sushil Kumar Sharma v Union of India* (2005), the Supreme Court observed that 'by misuse of the provision, a new legal terrorism can be unleashed'.

The Court while pronouncing such reasoning overlooked the situation of women, the problems they face while lodging the complaints, and the way law enforcement deals with such cases. Instead of seeing domestic violence as patriarchal terrorism, the Court erroneously concluded as misuse of the law. The courts show no empathy for women who after being battered brutally by their violent husbands, rejected by their natal families, stigmatized by society, running from pillars to post in the hope of seeking relief, placed their ultimate hope on the rule of law. By simply rejecting the women's

complaints, the courts deny justice to the complainants. Harsh language is used to justify the irrationalities while ignoring the fact that the law is underused.

Numerous studies have shown that it is not easier for a woman to walk to a police station to register her complaint. Police stations are hostile territories for women. Policemen do not easily lodge an FIR. Neither arrests are made easily nor is proper investigation done at a fast pace. Reliance on police as a first line of defense is problematic because the police are hostile to women's concerns, are themselves violent, and lack sensitivity toward the issue. The process of trial is lengthy. Meanwhile, the batterers do not sit quietly, and they utilize different ways to harass the complainants. Women hardly have access to financial resources or support to run around. They are often penniless when they walk out of the abusive marriage. These realities are ignored when the courts make repulsive remarks and render the domestic violence law toothless.

Men's violence is justified under the garb of irrational arguments

Violent acts such as rape, abuse, lynching, wars, and terror all are committed by men. The concept of toxic masculinity is propagated to rationalize men's violent behavior that confers them privileges and power. The biological theories rely on the assumption of men being hunter gatherers and warriors and therefore providers (McDonald et al., 2012). Kaufman's (1985) theory on the 'triad of violence' argues that men are taught to be violent to women, other men, and themselves because

male-dominated societies are not only based on a hierarchy of men over women but some men over other men. Violence or the threat of violence among men is a mechanism used from childhood to establish that pecking order.

Violence is considered essential to maintain hierarchy. A man is not socialized to be respectful to a woman or to control his anger. In the sexist world, a man is allowed to put onus on a woman that she makes him feel bad to make her feel inferior. In other cases, batterers may claim that victim lacks the ability to be a 'good wife' or a good mother'. Men who abuse their wives themselves live in self-denial, are defensive, and want everyone to accept that it is the victim who is asking for it. While justifying his unlawful actions, a man blames a woman and vilifies her. Age-old stereotypes, beliefs, and excuses make it easier for men to justify their violence behavior.

Batterers lie skillfully to deny the abuse. A batterer portrays himself as innocent while hiding a woman's vulnerability in a way that his sense of self-righteousness becomes important while she becomes invisible in the

process. During the mediation proceedings or in the courts, a batterer may pose himself as reasonable, charming, likeable, generous, and even flexible in comparison to the victim who may be confused, stressed, angry, rigid, uncooperative, and traumatized because of the abuse she has faced over the years (Meier, 2003).

The courts sympathize with men and take their abusive behavior lightly to pardon them. Common justifications used to reduce the gravity of the crime are 'He got drunk', 'He is stressed', 'Had a rough day at work', 'She must have done something wrong to provoke him', 'In his rage and jealousy he did that', or 'He has old parents and kids to look after'. The code of a man's honor is intermeshed with violence to justify a severe act of crime. Abusive men are seen as having a reputation to protect. However, while justifying violence by abusive men on the grounds of stress, what is ignored is the fact that violent men do not show the stress towards other family members or the strangers, but it is the wives or the children who are being targeted specifically by the batterers. To appease men, the courts fostered the 'old boys' network, turned a blind eye to the broken bodies, and scarred minds of the victims. Domestic violence is treated as an individual aberration or a psychological problem rather than a structural discrimination.

The shield of language

Violence is a crime whether carried out in public or in private. However, the law 'normalizes' violence when it is inflicted at home by the man who is supposed to provide protection. The legal language is twisted to trivialize the domestic violence by attaching the label 'domestic' before it. Violence is a strategy of control as it terrorizes the victim, yet it loses its value because the term 'domestic' separates public and private and thus limits the role of the state in the latter. Based on the common doctrine of the law of coverture (Blackstone, 1769), the legal identity of a married woman merges with that of the husband; it denies protection to a married woman. The spatial location as well as relationship elements are utilized to reduce the gravity of the criminal act while denying the vulnerability of the victim and overlooking the power imbalance in the relationship. By attaching emotional value to the context of violence, its significance is devalued (Marcus, 1994). Therefore, such an act of violence is condoned. It allows the perpetrator to act without fear or deterrence. The legal system connives with the men while reiterating the belief of 'rightness' and 'entitlement' of men within the domestic sphere (Marcus, 1994, p. 18).

Public law, private spaces

The law and the legal system are public, whereas the family is treated as a private institution. Further, the concept of the family is glorified and construed

as ‘a haven in the heartless world’ where individuals exist selflessly for the good of the whole, and therefore gendered division is introduced, which naturalizes women’s role in it. Therefore, when a ‘private’, ‘family’ matter is brought in the public domain, it is seen as an act of defiance by a woman who is disobeying the social norms. The law, culture, religion, and business propagate and thrive on the idea of keeping the institution of the family intact, even if it is violent, because it serves various purposes, including the strengthening of the casteist, imperialist, and sexist regime. Preserving marriage becomes crucial because the political economy is organized around the family. A girl from her childhood is taught to see marriage as the sole purpose of her existence. This belief is deeply entrenched. Therefore, even when a daughter is tortured in her marital house, she is forced to remain in the same. Even if one daughter is murdered, the parents hope that the second one will remain safe in marriage (Menon, 2012). However, when a woman questions such structures, she is seen as a menace, putting the social order in crisis. Men, therefore, are seen as victims who need protection from the ‘draconian’ and ‘monster’ laws. The state assumes that a man and his home need protection from a defiant woman. Paradoxically, the fact that many women suffer in marriage and yet are compelled to ‘adjust’ to the violence is considered normal.

Law uses a gendered notion of citizenship while adjudicating the cases of violence despite the constitutional provisions that guarantee positive affirmation. The androcentric law discredits women’s experiences of violence and utilizes codified patriarchal presumptions to filter their claims. Probably, the male-dominated courts are sympathetic to the concerns of men and conveniently overlook the principles of natural justice while upholding male supremacy. Allegiance is shown to the male community rather than the rule of law.

The exploitative patriarchal agenda

The police are the first line of contact in most of the cases for the battered women and act as the gatekeepers of the criminal justice system. Their behavior, sensitivity, and attitude toward such cases are important. However, police often work against women (Karlekar, 1998). Registration of the FIR is not done at the first instance; either the victim is sent back or the response is delayed. Police force the complainants to add the component of dowry demand in the complaint. The men in uniforms use their own sense of patriarchal morality to decide upon the rights and wrongs within marriage (Karlekar, 1995). Low priority is attached to the domestic abuse incidents. Complainants are compelled to make repeated trips to the police station. Arrest is rarely done. Often, the enforcement agencies fail to act against family members involved in a crime. As Agnihotri and Palriwala explained, the ‘Stereotypes of the “Indian family” cast it as a haven from

the travails of a materialist and modern world, an arena in which women—mothers, sisters and daughters—were respected and honored’.

Wender (2008) explains that the most discomfiting aspect of police bureaucracy is that it deciphers a human being into an ‘abstract assemblage of data’ (p. 107). This reduction of people into statistics devalues the complexity of life and dehumanizes individuals. Police being a masculine institution see women as inferior while diminishing their capacities and abilities rather than seeing the social realities that subjugate them. Women approach the legal system as a last resort, yet the law enforcers are unsure whether to treat an assault in a domestic relation as a criminal act or whether it is merely a normal acceptable way of disciplining and controlling a wife in a house.

Further, police act negligently, more specifically in cases in which a woman is a victim. A live example of the police negligence and lethargy adopted in the case of a dowry death came to light when the Bihar police arrested the accused after a delay of 21 years. A BSNL employee, Pandey was accused of murdering his wife in February 1999 within seven years of marriage. There was a history of coercive dowry demands and torture. The victim’s brother lodged the FIR, complaining that his sister was continuously harassed and the natal family was informed about her death after her cremation. Despite the seriousness of the allegations, the police filed the chargesheet more than 21 years later. Pandey was arrested on 7 June 2020. His bail plea was rejected by the trial court as well as by the High Court on the grounds that a highly poisonous substance was found in the viscera of the deceased on examination (Mahapatra, 2020). Such deliberate omissions by the police in cases of violence compel any citizen to question the efficiency of the legal system.

Distorting criminal law provisions while dealing with 498A cases

According to the provisions of 498A, cruelty against a married woman is a crime that is committed against the state. It is a cognizable and a non-bailable crime. However, in its implementation, it is not being taken seriously. The charges under 498A are not tried in a similar manner as other crimes listed in the IPC. For dealing with all other crimes, the law follows strict procedures. Even in the case of a dispute between neighbors or violence by a stranger, a standard procedure is followed because these actions are considered to be crimes against the state. Conversely, when a woman reports a case of cruelty within marriage, all such procedures are defied. While framing the charges under 498A, the other crimes listed in the penal code, such as those relating to hurt, grievous hurt, wrongful restraint, criminal assault, and causing miscarriage, are rarely invoked. Even in cases when women approach a police station with serious injuries, broken bones,

crippled, or scarred bodies, no other criminal provisions are invoked while framing violent men (Singh, 2013). Violation of bodily integrity of the victims is not prioritized

The police refuse to take the so-called family disputes seriously. Perhaps, crimes against women's bodies are not recognized as grave enough to be penalized. What is created is confusion and perplexity around domestic violence while curiously mixing it up with a women's material needs while promoting the family ideology. 'Cruelty' therefore goes unpunished and the crime is made invisible. What is pushed is counseling, and the irony is that neither the police nor the judicial officials are competent to provide the same (Ekta Resource Center for Women, 2011). Violence against a woman is an offense that should be treated seriously but by introducing the mediation, the legal system has made a mockery of this provision. The report 'Staying Alive' notes that the criminal agencies are responsible to initiate the trial and to prosecute the accused

hence, more often than not, the law was defeated by sheer inaction which soon came to be institutionalized all over the country, along with the policy of counselling, conciliation and mediation.

(Lawyer's Collective, 2012)

No attempt is made to address issues arising out of an iniquitous social structure. Clubbing a crime against a woman with the question of her daily survival is a flawed strategy and in no way could reduce the culpability of a crime. The short-term advantages of 'protection' within marriage erase the concept of gender equity and justice in the long run and ignore the oppressive aspects and structural vulnerabilities within a marriage. In cases pertaining to domestic abuse, arguments are wrongly raised that 'pursuing the criminal case will only satisfy woman's vengeance' or that '498A is a hindrance in life'. However, these flawed assumptions overlook the fact that it is essential to maintain law and order to prevent a crime from reoccurring.

The aim of criminal law is deterrence and the same is applicable for the wife-battering cases. The element of deterrence can work when the perpetrators are tried, convicted, and punished. An accused under 498A therefore must be tried irrespective of its repercussions on the relationship between the victim and the accused. Sentencing based on a relationship between the victim and the perpetrator does not meet the ends of justice. The reason relating to the 'needs' of the survivors cannot be used to detract the course of litigation.

Procedural lapses

The adversary system is designed to be reactive and to respond to cases only when a complaint is made and the witnesses cooperate to perform

the roles expected of them. In this system, the victims are often labeled as 'uncooperative' either way, when they reunite with their abusers or fail to do so. Without examining the reasons as to what compels a complainant to withdraw her complaint, the police and courts doubt her veracity and label her as a 'liar'. The system undermines the subjectivities, pain, and suffering of the survivors and allows the accused to minimize his responsibility. Inaction and passivity toward domestic violence cases are routine. Rather than holding batterers accountable, the system ends up allowing them to abuse with impunity. Even when the case is tried in the court, the integrity of the victim is put at stake.

A survey by the All India Democratic Women's Association (AIDWA) of the decisions in cases pertaining to 498A shows that the courts have penalized the accused only in cases in which the grossest violence is reported and have interpreted the provisions narrowly. Frequently, the abusers are more powerful than the survivors and use all their might to make their voice heard. They have the capacity to hire an expensive lawyer, use their money or muscle power, and utilize all means to channel the process in their favor, whereas the survivor is left at the mercy of the police who may conduct a shoddy investigation, the public prosecutor who is overburdened or is not interested in such cases, and the subjectivities of the judges. The law views a female litigant as devoid of agency, sexually naïve, and lacking the ability to manage or own property, one whose benefit lies only in remaining in marriage even if she faces violence. Such narrow reasoning completely ignores women's contributions and their capacity or ability to contribute as independent citizens, and it is perilous as it fails to consider the complexities of human lives.

Painful trials agonizing prosecutions

Several studies have shown that courts are not comfortable places. Rather, they act as hostile territories for the litigants as they encounter traumatic experiences (AIDWA, 2003). A research study noted that,

While the men can pay off people in the court and sometimes give alcohol bottles to many employees, these people refuse to cooperate with the complainants. Some respondents have also claimed that their lawyers are not presenting the cases properly in the court. Few of them claimed that there were many allegations made against their character in the court which scared them from appearing in the court again. Another problem faced by the respondents is that the cases go on for too long and get adjourned. . . . This creates added stress and tension of coming back to the court more times than they expected. Overall, most of the respondents found their experience in the court extremely stressful and frustrating, while at

the same time it is financially beyond their means to keep the cases going on for years. Some respondents have also complained that the stress of both court and police officials is on pushing both the parties to compromise. Only 4 percent respondents have reported that their experience in the court has been satisfactory and that they are expecting a favourable judgement.

(Singh, 2015)

Even in PWDVA cases, husbands harass women by not appearing in the courts even after notice is being issued. The violent men are calculative and know that courts will not arrest them. Therefore, batterers, in many cases, get another opportunity to mock the women by not appearing in the courts initially to put down their morale. What women get in the courts are ‘dates’ and not justice. Timelines, as mentioned in the law, are not followed and it takes months to initiate trial proceedings even after a notice is issued.

Trials are embarrassing for the victims rather than for the perpetrators. Fabricating a case therefore is not a convenient option when the majority of women are not aware of the legal provisions. Moreover, the process of seeking justice is not cheap, easy, or quick. Also, the prevalent stereotypes among the police, judges, lawyers, and other stakeholders are hurdles to women’s access to justice. Those propagating the backlash are not concerned about improving this system.

In the courtroom, a woman’s testimony is given less importance than that of a man. Bias operates in the courtroom where the victims are being subjected to the range of pejorative assumptions that situate them as the ones who invite assault by asking for it. (Smart, 1995). Also, little research has been conducted on the judges’ behavior in the courtroom or the way they communicate with the parties in litigation. Many judges are often not familiar with the dynamics of intimate violence, or they are not aware of the victims’ compelling reasons and situations in which they mobilize the system, file charges, or withdraw cases. Basu and Jaising (2005) observed that women are often viewed with suspicion. While examining Justice JD Kapoor’s book *Laws and Flaws in Marriage* (2002), the authors show the ways the prejudices operate within the courtrooms.

Law is not victim-centric

The adversary process of trial is highly technical and complicated. The system is not victim-centric. The role of the victim is limited to filing the complaint and appearing as a witness. The criminal justice system, at least theoretically, ensures that the rights of the accused are protected at every stage. However, for a victim, the remedies are limited. For instance, compensation is provided under Section 357 CrPC. However, the experience shows that this provision is not utilized in cases pertaining to domestic violence.

Further, a victim does have a right to seek maintenance, but getting the same is not easy. Several studies have shown the misogynist manner in which this law is implemented where a wife is treated as an object. Moreover, the PWDVA provides for making safety plans for the complainants; however, over the decades, this provision is conveniently ignored by the state.

Can domestic violence be dismissed as merely a ‘domestic’ dispute?

The Family Courts Act, 1984 mandates the provision of creating family courts as an attempt by the women’s movement to tackle ‘the hostile and intimidating atmosphere within the courts, endless delays, strict technicalities, and the sexist and anti-women interpretations of laws by judges’ (Agnes, 1990b). However, these courts work on the premise of saving the family rather than protecting the women. The predominant presumption is that the matrimonial ‘discord’ is the key for filing cases and in the process, violence is negated. This argument overlooks the fact that violence entails fear, power, and control, whereas in the dispute, both parties are on par. Framing serious violence as a dispute reduces the culpability of the action of the perpetrator and holds the victim accountable in the course.

According to the *Oxford Dictionary*, dispute implies a ‘disagreement’. Dispute arises when two parties are on an equal footing. Domestic violence, on the other hand, entails a grave abuse that occurs in a situation in which the powerful exerts authority and control over the weaker. Yet violence within a domestic situation is dubbed routinely as a dispute, ‘squabble’, or ‘quarrel’ by the state, without recognizing the gravity of the circumstances and its impact on the victim. What is propagated is the Alternative Dispute Redressal system as an approach to ‘resolve’ conflicts rather than the rights-based approach to provide justice to the victims. During the mediation, violence is not seen as an act of or intimidation or terror; rather it is construed as an act that enforces discipline and is therefore justified. The purpose of the mediation is to avoid complicated legal processes to reach simple ‘compromises’ and thus reduce the amount of litigation on the already overburdened courts, no matter that this is done at the cost of denying justice or even entailing the harm to the victim. What is being pushed covertly is the process of compounding a non-bailable offense.

Mediation is carried out to pacify emotions without addressing the power discrepancies within the relationship. For this purpose, counseling centers have been created under different names such as CAW Cells, *Sulah kendras*, or *parivarik nyayalaya*. All these institutions deal with the ‘disputes between a husband and a wife’ to save the institution of ‘marriage’ through the active negotiation. The aim is to protect conjugal affinity and to simultaneously protect women’s economic interests while keeping the family intact (Basu, 2012). The state assumes that its role is to salvage the family from being

torn apart by arriving at a compromise between the parties. However, what is ignored is the fact that the counseling centers diverted attention from the seriousness of the crime where the pervasive violence is normalized as ordinary and mundane. The introduction of the *Mahila Thanas* or the Women's Police station has further reduced the larger issue of structural violence to a problem of adjustment in the marriage while marginalizing the complainants and trivializing their complaints (Greenberg, 2003). Often, forceful intimidation is utilized for the purpose. A legal wrong is done away with procedural technicalities. Focus is laid on saving the marriage rather than providing a violent-free environment to the survivor or to meet the ends of justice by penalizing those who commit the crime of violating a woman's mind, body, and the soul. Mediation or conciliation avoids questions relating to power and property within a relationship. Coercing women to go back to violent situations without any promise of security or safety is not a viable solution. The proponents of the mediation have selectively decided to choose mediation as this method suits the logic of patriarchy.

Basu (2015a) in a study in Kolkata's Family Court depicts that counselors and judges often see the law as 'tedious, pointless, and indeed harmful' and argue for mediation, and other forms of alternative dispute resolution (p. 92). Attempt is made for reconciliation to push the idea that marriage supports the women economically and socially. Similarly, Vatuk (2005) in her study of the family courts in Chennai and Hyderabad states that paternalistic views operate to undermine women's interests. She observed:

Those who administer the law also believe that the proper place for an adult woman is within a marital relationship and that she should do everything in her power, no matter what the cost, to ensure that she should remain there.

(p. 47)

It is not only the establishment that narrowly interprets domestic violence; rather, it is a common perception that domestic abuse is a symptom of a collapsing marital tie that can be salvaged by counseling. Many of the counseling centers therefore compel women to 'adjust' within marriage. This approach overlooks the fact that the abuse in homes does not involve only one of episodic incidences; rather, battering is a continued process and its frequency may increase over a period of time. Mediation cannot be deployed in an unbalanced situation in which one party is abusive. Murphy and Rubinson (2005) argued that mediation cannot work between a predator and a victim as the process is completely skewed in favor of the abusers. Domestic violence is a complex phenomenon in which a woman experiences a systematic pattern of control and domination and therefore not fit for mediation. Experiences reveal that in many situations, the battered women find it difficult to bargain for their rights or to directly participate

in mediation process due to psychological scars of battering or due to the fear that mediation might provoke the batterers to engage in retaliatory violence. Also, 'bad' or 'untrained' mediators may not understand the power dynamics and may further end up re-victimizing the victims (Krieger, 2002). The untrained counselors do not see violence as an assertion of male dominance but as a problem that arises due to provocation of men by women (Poonacha and Pandey, 1999). Victims can be easily manipulated and compelled to compromise the case after years of slogging in the courts. There is no in-built system to ensure that the coercion could not influence the process.

The manner in which the law is implemented is such that enormous pressure is put on the woman survivor of violence to compromise—either to go back to a violent situation again with little assurance that the violent act will not be repeated in the future or to 'settle' the case, take her *stridhan*, withdraw the legal case, apply to quash the criminal proceedings to 'move on'. Through manipulating the legal procedures, violence is framed as a problem of adjustment in a man–woman relationship. A married woman is not construed as an independent citizen who can lead her life outside marriage. The operational script reveals that the law protects the conjugal authority while compromising the safety and security of women and children in guise of their economic interest. During the counseling sessions, the burden is placed on the victim to select violence in lieu of economic and social security offered in marriage.

The purpose of mediation is not to advise women of their legal rights or to assist them in the healing process but to pressurize women to give up their battle and bully them to surrender to the demands of patriarchy. Power colludes to protect the privileged men. A complainant is being given the hidden cues that running around in courts may not help her and that she should therefore submit and be satisfied with whatever is being doled out. The question of balancing rights never arises because the bargaining process is uneven. The balance is tilted in the favor of the batterers. Mediation fails to protect women from subsequent violence and perpetuate their continued victimization. The process of mediation twists and manipulates the criminal process, or it is the '*patriarchal manipulation*', as I call it, that denies justice. What is ignored in this presumption is that the role of law enforcement is to address the violence and not to insulate the perpetrator.

The use of mediation is premised on the notion that family should be protected from the intrusive legal system and that mediation may speed up the process of justice. It is assumed that informal remedies may help the parties communicate effectively and resolve the situation in a cost-effective manner. However, the proponents of the conciliation put onus on both the parties assuming that both have roles in precipitating the violence while compelling women to condone serious violence in the process. No formal action

is initiated against the batterer once parties 'settle the dispute'. Rather, the criminal charges are diminished against him. Violence is thus trivialized and normalized in the process. Mediation as an alternative to criminal law results in acquittal of the accused on procedural grounds. It fails to prosecute the guilty and imposes no penalties even for the serious crime. Also, mediation does not recognize the fact of power dynamics in an asymmetrical relationship, unequal bargaining power, and differential equation between the parties in which the woman is economically, materially, and emotionally dependent on the man.

Mandatory mediation is pushed without considering that in most cases, these tactics are deployed by the accused to delay the matter and to escape his criminal liabilities. Through such tactics, victims who withdraw the case often lose their hard-earned legal ground. More so, because of the oppressive trial procedures, interminable delays, and complicated processes, the legal discourse is erroneously distorted. The current dispute resolution system transmits the hegemonic ideas and promotes dominant cultural norms, and in the process creates a legal culture that fosters the prevailing patriarchal order. Patriarchy has slyly brought the technique of mediation in the process of adjudication of domestic abuse cases while absolving men of the responsibility of their unlawful actions on the pretense of saving the family. Those measures that support women's rights such as the recognition of the concept relating to the battered woman syndrome, Stockholm syndrome, matrimonial division of property, ensuring provisions relating to shelter homes, and similar aspects essential for distributive and rehabilitative justice, have been intentionally ignored as these empower those who are vulnerable.

This process of 'coercive harmony' as explained by Laura Nader (1994) destroys rights by limiting discussion of the past. It is opaque, prohibits anger, curtails freedom, eliminates choices, and removes protection of law. It overlooks the 'victim' status and compels women to settle the matter even if this is done at the cost of her health, life, or limb. Mediation ignores the fact that parties in conflict in no way operate within the universe of 'balanced bargaining equity'. Mediation in no way satisfies the survivor's need for justice. Rather, it compels survivors to curtail their emotions and hide their resentments. During the process of mediation, a woman is vulnerable to intimidation, threats, and harassment and is under extreme stress and pressure because of the presence of the batterer and is unable to voice her concerns (Johnson et al., 2005). Mediation overlooks the complex psychosocial aspects and ends up denying justice to women who have less bargaining power and perhaps lack the capacity to negotiate. Further, no efforts are made to hold the hands of women who dare to question the violence within matrimony. No mechanisms are in place to ensure that the complainant could cope with the technicalities of the complex process.

How is compromise or *samjhauta* arrived at?

A title of the news item by the NDTV report reads,

‘End this story’, cops allegedly told Unnao Teen’s family in rape case.
(Pandey and Verma, 2019)

In this matter, a teenage girl was allegedly raped by a legislator, Kuldeep Singh Sengar. Her FIR was not registered; rather, her father was picked up by the police allegedly for possessing illegal arms. He was tortured in custody where he died. The girl reportedly tried to commit suicide before the house of the chief minister, and it is then that her FIR was registered. The case reached the Supreme Court, and finally, the accused was jailed. Even when jailed, the legislator used to make calls from the prison to threaten her family. A few months later, while going to the court, she reportedly met an accident in which her mother and her aunt died while she and her lawyer faced critical injuries. The girl’s family alleged that the accident was engineered by the accused and when her uncle went to the police station to report the case, the police pressurized him to ‘compromise’ the matter. The family was threatened that they will be killed if they do not settle (Caravan, 2019).

This case is a clear example of how compromise works in cases relating to violence against women. A victim is threatened, intimidated, and bullied in all possible ways to compel her to give up the process of litigation. No effort is being made to ensure the safety of the complainant. The system is rotten to an extent that the accused, being powerful, could threaten to murder her family members. The police sided with the culprit as the accused is powerful. In many other cases, experience indicates that courts hardly come to rescue the victims, even if they file the applications for protection. In domestic violence cases, the situation is worse because it is treated as a lesser crime.

Counseling sessions negate serious violence

Next is a verbal transcription of dialogues exchanged at the counseling session in December 2015, which the author observed. In a room in a counseling office in South Delhi, there was an expert counselor, a frail looking survivor (W) with her aunt, and the perpetrator (M) with his older brother besides the author who was present there as a researcher after she had gone through the records of the complainant and after speaking with her for a while before the session with the permission of the court and after obtaining the informed consent from the survivor.

COUNSELOR TO THE SURVIVOR W: So, what do you want? (W remained silent)
W’S AUNT INTERVENED: Sir, she has suffered a lot. (showed scars and burn mark on W’s hands)

ELDER BROTHER OF THE PERPETRATOR M: Sir, this is a common dispute between a husband and a wife and these are usual things that happen in every such relationship . . .

M INTERVENED: Sir, these are self-inflicted marks . . . she has done it herself to make a story . . . to falsely implicate me and my family . . .

COUNSELOR: Hmm . . . (to M) but why have you allowed her to do that? She is your wife after all. Don't you know how to treat a wife?

M: Sir, I am willing to keep her but she is refusing.

COUNSELOR TO W: Why are you refusing?

W: Still sobbing . . .

W'S AUNT: Sir she is willing to go provided he (the husband) stops abusing her. . . They are demanding all expensive items, how can we afford, her father works as an auto driver . . .

M'S BROTHER: Sir he will stop that . . .

M (INTERVENED): She should behave nicely . . . After all it is her duty to take care of the family . . . to listen to me . . .

COUNSELOR: But she is your wife, you are supposed to take care of her

M: But she must respect me and my parents . . . Also she does not know how to cook food, to take care of kids, not to argue with my parents on small issues. . . .

COUNSELOR: For six years she has been with you taking care of your family . . . is she not doing everything? What do you do?

M: I have a small business. . . .

COUNSELOR TO W: Do you want to give him another chance?

W: Silent.

W'S AUNT: Yes, sir she will . . . provided he gives in writing he will not beat her. . .

M: Will she behave nicely . . . she always argues. . . .

ELDER BROTHER OF THE PERPETRATOR: Sir what in writing . . . these are usual things . . . happens in every family . . . This is not a crime . . . She is 'his' wife . . . Isn't it is common to discipline a wife and . . . *agar haath utth bhi gaya toh kaunsi badi baat hai? aisa toh har ghar me hota hai.* (Even if he has raised his hand what's the big deal? It happens in every household.)

Author could not stop herself from intervening here: *Haath utth gaya* . . . Is he not a criminal? She has undergone six abortions, more than eight miscarriages over a period of six years, undergone treatment for broken bone and broken jaws three times . . . her right eardrum was damaged . . . the skin of her back has been ruptured and is charred . . . she was admitted for a fractured hand a year later and had to stay in hospital for eight days . . . three years back an attempt has been made to burn her alive . . . there are instances of other forms of abuses . . . and her two daughters are also being beaten regularly, elder one not being sent to school. . . . Is it all true? Isn't all that a crime? Just because she is his wife, is he entitled to treat her this way?

If one hurts any stranger s/he is jailed for every single act of brutality, but here just because she is his wife, he is entitled to commit such actions without even thinking of repercussions? Are men entitled to own and brutalize the bodies of their wives just by the virtue of marriage?

(The rest is omitted as it is irrelevant for the purpose here.)

These are the common dialogues often repeated in almost every counseling session. These arguments hide the brutal violence behind the garb of everyday disputes while upholding the entitlements of violent men and are commonly being raised to bargain violence. What is omitted in such negotiations is the cold-blooded history of ruthless injuries and the intolerable pain women undergo silently for years. No one in a counseling session or court keeps track of the multiple injuries and manifold harm women face over a prolonged period before they seek help. Even otherwise, the law enforcers hardly contemplate the harm or the injuries women undergo.

Frequently, assumptions are raised that when a man abuses his wife, it is an act of discipline and that when he apologizes later, it is not to be counted as violence; or why did she not resist; or he is 'progressive' therefore, he could not commit violence; or that she has not raised her voice therefore she accepts her fault, or she has provoked him; or because he loves her and is therefore entitled to rage or because it is a man's right to control and discipline his wife and children, and so on. These strings of myths have been used to justify and condone violence. An attempt is made to pretend that there is nothing wrong with such behavior, denying the fact that every act of the crime has a cumulative effect and over a period may seriously hamper the victim's health.

Violating a woman's integrity and safety needs to be dealt with according to the legal provisions, yet this is consistently disregarded. The tendency to ignore the daily act of violence strengthens the sense of impunity of the batterers. Also, the scenario depicts how the situational context as well as individual notions of various actors involved, such as the abusers, battered wives, the socioeconomic background of the parties, the subjectivities of counselors, and other factors are brought into play to determine the legal outcomes. This is problematic because justice apparently is invisible in such interaction.

As the *Khap Panchayats* issue *diktats*, similarly, the informal or quasi-judicial fora force women to see violent marriage as a lovable zone and compel them to adjust into it. At each subsequent stage of the legal system—from pre-litigation to trial, the approach followed is to settle the case. Providing justice to the complainant is not a concern. Even in cases in which a trial continues, the complainant is often compelled to give up the battle because of reasons such as the paucity of funds, delay and complications in the system, lack of support, and so on. Personal law provisions relating to the restitution of conjugal rights, fake custody battles, denial of maintenance,

and divorce applications are all strategically deployed as tactics to harass the complainant. Applications are filed to delay the matter with the sole aim of pressurizing the woman to give up litigation. Implicating the complainant and her family in false cases is also one of the techniques deployed besides blaming the victim. The purpose is to forcefully compound the noncompoundable. Proceedings are quashed whereby the complainant is compelled to make a statement stating that all her grievances are resolved or amicably settled and acquittal is sought on the grounds that the complainant has turned 'hostile' and thus the case should be closed. The courts and the police compel women to give up the path of litigation and discourage them in their attempt to seek justice.

Distorting data to generate myths

In a patriarchal culture, a stable marriage is considered a prime indicator of respectability while ignoring the price a woman pays in terms of 'bearing violence' or 'adjustments' to keep her relationship intact. Any debate on domestic violence issue is turned around to point out the number of couples leading a happy marital life. However, the data of the number of cases of domestic violence and dowry deaths being registered indicate a different picture. According to reports by the NCRB and the NFHS, for years the incidences of 'cruelty against married women' have been increasing.

The statistical data represent the tip of the iceberg as there are many cases of violence that go unreported because the victims never come forward to report the case. Underreporting of crime is a well-known fact and is dependent on many variables, including the willingness or the unfavorable situation of victims to report a crime or denial by the police to register a crime. Further, a huge discrepancy may be noted in the data obtained from the NCRB report and the data presented by the NFHS. Though no actual comparison can be made between these two different data sets, one aspect is common and that is that violence against women is increasing and fewer women are reporting the case. In case Section 498A has been evoked and implemented properly, the number of dowry deaths would have gone down, but this has not happened.

Low conviction rates: A ploy of patriarchy

The conviction rate in the cases pertaining to domestic violence is lowest among the categories of crime and indicates the inefficiency of the law. According to the NCRB reports, the conviction rate of cases under Section 498A was 21.9 percent in 2006 and dropped to 14.6 percent in 2019. The conviction rate in cases of murders in 2019 is 41.9 percent and 66.7 percent in the cases registered under the Arms Act. The average

conviction rate of all crimes ranges between 38 and 46 percent from 2006 to 2019.

Experiences reflect that the conviction rate is low because many cases are forcefully ‘settled’ between the parties, and the FIRs are quashed to amicably work out the ‘settlement agreements’ between the parties (Ekta Resource Center, 2011). The ‘settlement agreements’ are used as tools by violent men to escape their culpability. Women are being forced to withdraw FIRs in lieu of a meager amount, if any, offered against their *‘stridhan’*, maintenance, and their financial and economic rights. And all this happens right inside the courtrooms where the officials promote such settlements. Also, witnesses are hard to find when the crime takes place inside the four walls of the house besides the lacunae in the police investigation. Experiences indicate that in case a woman does not surrender, she is made to run around in the courts on different dates in different proceedings, forced to invest her scant available resources to hire a lawyer, look after her kids, denied maintenance or any form of support—all this is done to force her to give up her battle for justice. Still, if she dares to persist, the batterers use their power and resources to drag litigation by filing appeals against the orders passed by the lower courts. Litigation continues for years. Women who are mostly unaware of their rights, already in a vulnerable state, frustrated and tired, lack resources, recovering and healing from violence they have faced for years, may or may not have a continuous source of earning or financial support, managing kids, hassled by their circumstances, worried about their future, with no place to stay permanently, concerned about the safety of self and kids, left with little hope from the legal system are being forcefully pressurized by the courts to work out a ‘settlement agreement’ with their violent husbands. Also, perhaps because of too much pressure being exerted on women, they file to quash the complaint out of frustration of running around in the courts, delay, lack of finances, or for other reasons, and these are not being taken into account while making the arguments against the law.

The NCRB report of 2019 indicates that the chargesheeting rate in cases registered under the Dowry Prohibition Act is 74.7 percent. It is 90.3 percent in dowry death cases and 81.5 percent for cases registered under Section 498A. It is 95.5 percent for cases registered under the Immoral Traffic Prevention Act. In a large number of cases registered under 498A, the trial process is not completed because cases ended with the final report being submitted as false in the police investigation (7,606), cases ended as a mistake of facts or law or civil dispute (6,939), cases true but insufficient evidences as recorded by police (6,929), compounded or compromised, (8,397), disposed of by plea bargaining (872), quashed (1,030), disposed of without trial (10,611), discharged (3,284), or are acquitted (31,556). Hence, the data reveal the casual approach of the law

enforcement agencies while dealing with the cases of cruelty. Swayam, an organization that conducted a survey in 2010, observed that the courts are reluctant to convict under this law because of the attitude that condones and accepts marital violence.

Acquittal rate is high

A glance at the data reveals that over the years, the conviction rates are going down while the acquittal rates are increasing in cases of domestic violence. More cases are being withdrawn or marked as false. The phenomenon of witnesses turning hostile is common. Jaising (2014b) explains that the high rate of acquittal is the result of shoddy investigations, tardy reporting, benefit of doubt given to the accused, or plain bias against women. Additionally, many women may not come forward to give evidence against perpetrators because of fear, compulsion, or pressure to settle the case. Moreover, the eagerness of the law enforcement agencies to arrive at a settlement is one of the reasons that results in the high acquittal rate. Subjectivities and biases, gender stereotypes, zeal to save family, giving chance to ‘men and women’ to ‘move on’—all, club together to influence the trials. The reasons of acquittal are nowhere compiled. The high acquittal rate indicates that there are problems with the system that need to be examined.

Also, in cases in which a woman is courageous enough to fight against the twisted and manipulative system, she may not get favorable orders because of the prejudices inherent within the system as evident from the various orders that favor the batterers. Even in cases in which she gets favorable orders for maintenance, husbands refuse to pay up, giving the same lame excuses in the courts. A simple application for execution of orders may take years. The law in no manner has been able to deter the crime. By indulging in the debate on the misuse of law, an attempt has been made to divert attention from the larger issues relating to the seriousness of the crime, structural realities that are fueling patriarchal tendencies, and the responsibility of the state to provide for social and economic alternatives to the battered wives.

Ironically, the Law Commission (2012) in its 243rd Report remarked,

The object and purpose of Section 498A cannot be stultified by over emphasising its potentiality for abuse or misuse. Misuse by itself cannot be a ground to repeal it or to take away its teeth wholesale. The re-evaluation of Section 498A merely on the ground of abuse is not warranted. . . . The allegations of misuse do not however mean that the Police should not appreciate the grievance of the complainant woman with empathy and understanding or that the Police should play a passive role.

(para 7.1)

No, the jails are not filled with *Saas-Nanands* or relatives of husbands

A sensational report reads:

Tihar insiders call it the '*Saas-Nanand*' (mothers-in-law and sisters-in-law) barrack. It is a part of Central jail number 6 in Delhi's infamous prison which hold only women accused in dowry harassment cases, almost always, the mother-in-law and her daughters. . . . One fifth of all women prisoners in Tihar are accused of dowry cases under Section 498A and Section 406 of the Indian Penal Code.

(Manra and Tewari, 2014)

It is raucously and wrongly reported that the Tihar Jail No. 6 (Special section reserved for women, also known as Women's Jail) is mostly occupied by the relatives of husbands framed under 498A making the news overtly sensational. However, a glance at the website of the Tihar Jail, a well-known prison complex located in Delhi reveals that as of 31 December 2019, the number of persons lodged in the jail is 17,534, which was 13,604 in 2015 compared to the sanctioned capacity of 10,026. The capacity of Jail No. 6 is 400 and against that 378 female inmates are occupying the premises. Of those lodged in Tihar Jail, 96.4 percent are men and 3.59 percent are women.

In the category of *undertrials*, 20.2 percent are lodged for committing murder, 17.26 percent for thefts, 14.25 percent for rape, and *only 1.81 percent for dowry deaths and 0.22 percent for offense under Section 498A*.

Also, in the category of *convicts*, 36.5 percent are lodged in Tihar Jail for the crime of murder, 14.65 percent for rape, 4.01 percent for thefts, 0.69 percent for criminal breach of trust, *1.84 percent for dowry deaths, 0.16 percent for crime under the Dowry Prohibition Act, and 0.03 percent for offense under Section 498A IPC*.

These data disprove the assumption that 498A is misused as the Tihar Jail is not filled with *Saas* or *Nanands* or other relatives of the husbands. The percentage of both undertrials and convicts jailed for the crime for dowry deaths, domestic violence, or even under the Dowry Prohibition Act is minuscule compared to those who have been arrested for crime for murder, thefts, or rape. However, the media has manipulated and twisted the facts without checking from the source, and the state actors repeated these fake data.

Similarly, while referring to the Prison Statistics India, 2018, it may be observed that the occupancy rate all over India is 117.6 percent. Out of a total of 1,339 jails all over India with the capacity of 3,96,223 inmates, 24 are women jails with the capacity of 5,593 inmates. The number of women prisoners as of 31 December 2018 is 3,243 compared to 4,66,084 prisoners in all other jails.

As of 31 December 2018, out of a total of 1,732 women prisoners with 1,999 children, 1,376 are undertrial prisoners while 355 are offenders. In terms of age, 43.4 percent are in the age group of 18 to 30 years, while 43.3 percent are in 30 to 50 years of age group. Only 13.2 percent are in the age group of above 50 years. The assumption that old frail relatives or young relatives of the husbands are put behind bars is therefore refuted by these data.

Two-fifths are educated up to class X, 21.7 percent have studied above class X but less than graduate course, 6.4 percent are degree holders; 66.49 percent have been imprisoned under Section 302 (Murder), 11.61 are imprisoned for the crime of rape and 8.06 percent are imprisoned for an attempt to murder. For the cases pertaining to crime against women, 60.81 percent (12,076 persons) are jailed for the crime of rape, and 28.73 (5,705 persons) are imprisoned for committing dowry deaths as of 31 December 2018. Also, 54.3 percent are being imprisoned under the Alcohol and Drugs Act, 12.9 percent for committing crime under the Arms Act, and 8.27 percent are imprisoned under the Foreigners Act or the Rules relating to Passport Act.

In terms of undertrials, under the category of those tried for committing crime against women, 58 percent are being tried under the crime relating to rape and 25 percent are being tried under Section 304B. Fifty-five percent are tried under the Alcohol and Drugs Act, 17 percent are undertrial for crimes under the Arms and Explosives Act, and 4 percent (total of 2,563 persons) are tried for dowry murders and under the Immoral Traffic Prevention Act.

None of the prisoners booked under 498A are found in jails. Hence, the assumption that jails are ‘crowded’ with husbands and their relatives is erroneous and faulty as observed from the data from the Tihar Jail in Delhi and from prison statistics compiled by the NCRB. Domestic violence is clearly treated as a lesser crime. Rather, it is a travesty of justice that while so many cases are reported under 498A, only a few are imprisoned or convicted under the law. The statistics indicate that the crime under 498A is under-reported and the police are not taking action easily in such cases. Perhaps, the male-dominated courts and bureaucracy have closed their eyes to reality and are joining the groups propagating the myth of the misuse of law as it suited them most.

In short, the available data indicate that a large number of women are facing violence within their homes. This is also validated by the data from the NFHS as well as other research studies. However, the conviction rate in domestic violence cases is low and decreasing over decades—the impact of the courts’ directives and the efforts to dilute the law. Data also show that the police are not arresting the accused persons. Thus, to say that the women are misusing the law is a myth.

Media is fueling the patriarchal agenda instead of revealing the truth by spreading ill-informed biased opinions without conducting in-depth investigations. The media negatively highlight the case of '*Looteri Dulhan*' (A robber bride) (The Times of India, 2018) but failed to raise any hue and cry when a woman is being burned, murdered, tortured, or killed or when she commits suicide. While propagating the mis-information, it is wrongly projected that women are liars, dubious, and mischievous. What is being hidden in this cacophony is the fact that a large number of women are silently being torched to death or are being abused violently that they lost their life or limbs and may spend years in hospitals.

Also, various social media channels are being deployed by the powerful, privileged men to lobby against women who dare to raise their voice against violence. With the advent of digital technology, a number of virtual pages, Whatsapp groups, and other social media pages are being created that advice men about the ways to counter the allegations launched by their wives. A simple Internet search leads to numerous pages that erroneously advice men on how to save themselves against this law, how to avoid paying maintenance, and what to do to protect themselves from 'frivolous cases'. There are websites that claim to provide expert advice and are widely circulating the judgments that are against women's rights while celebrating the false victory of men with much hype. Violence within the families is undermined with the malafide intent.

In short, the purpose of the law is to challenge the discrimination and to rehabilitate the battered women. However, currently the legal discourse is twisted to ignore the fact that domestic violence is a patriarchal terrorism that needs to be dealt with from multidimensional perspectives. Further, the law has been molded to introduce the concept of mediation by dubbing the serious violence as a 'dispute' or an 'ego tussle' that has done more harm. Instead of holding violent men accountable, a woman's economic rights are being intermeshed to pardon the serious crime committed by men. The courts are mirroring the oppressive misogynist culture instead of upholding the constitutional norms. Killing or torturing human beings is barbaric but applying the procedural technicalities makes it seems mundane, one-time, aberrant behavior. Legality enables the perpetrators to conduct gruesome crimes and enhance their impunity when the abusers know that the formal state machinery is complicit, legitimizes, and amplifies the exclusion of women. Further, the data are distorted to propagate the myths and dilute the law where the media, state, and society in complicit act to strengthen the culture of oppression.

THE CULTURE OF SILENCE, VIOLENCE, AND IMPUNITY

We must resist all challenges to the hard-won affirmation of what we know: women's rights ARE human rights, and they are not negotiable. Human dignity cannot be dissected, compartmentalized, compromised—nor can it be a privilege of few.
(Michelle Bachelet, 2020)

The culture of violence with impunity is linked to and propagates the culture of silence. The sense of privilege and entitlement a man enjoys in a patriarchal society propels him to use violence against women despite knowing the fact that his actions are legally and morally wrong. This entrenched belief that no matter how wrong or illegal his actions are, he can get away with them generates a sense of impunity. Impunity exists because it is a well-known fact that a woman is at the receiving end. Whatever she may have gone through, she is painted as guilty and society labels her as unworthy and incapable of handling her situation. Her sense of worth, her dignity, and pride are questioned while his ego is pampered. Moreover, the attitude of victim blaming contributes to a climate of social passivity, reduces inhibition against violence, and makes it more difficult for women to report violence. For centuries, women across the world are battling against this culture, yet the toxic masculinity has not changed much. The policies and the laws for women empowerment could not alter the obnoxious deeply embedded belief of male supremacy. Rather, the system propagates the culture of violence in which men go to the extent of using law as a tool to suppress women by filing retaliatory litigation cases known as SLAPP suits (strategic lawsuits against public participation). This chapter explores this culture of silence around violence and the impunity associated with it and how it works to enhance the crime against women.

How the culture of violence with impunity works

Momit got married to Akash Mian in 2017. He tortured her and demanded Rs10,000/-. Five months later, he dropped her at her parents' house. A few

months later, when he changed his mind and asked her to return, she refused. On 13 January 2018, when she went to see her ailing grandmother, Akash came and all of a sudden threw acid on her face. The attack left her with a third-degree burn on her forehead and eyelid and a second-degree deep burn on her face and shoulder. The damage and disfigurement are permanent. The FIR was registered under Section 498A and Section 326 IPC. The trial court sentenced the abusive husband to imprisonment for life and a fine of Rs 1 lakh to be payable to the victim under Section 326 IPC and another three-year imprisonment under Section 498A. On appeal, while ignoring the plight of the victim, the Division Bench of the High Court stated

because his reluctant wife was not willing to re-unite with him which has caused a sense of frustration in the appellant

It, therefore, acquitted the abuser under Section 498A and reduced the sentence under Section 326 IPC (*Alamin Mian v State of Tripura*, 2020).

In Kerala, a schoolteacher and a local leader allegedly raped a ten-year-old student multiple times. The police initially registered the FIR under the relevant sections of the POCSO Act. However, the accused persons were not arrested and the case was transferred to the Crime Branch. After more than 90 days, the Crime Branch filed the chargesheet but dropped the charges under the POCSO Act. It is only after human rights and women activists protest that one of the accused was arrested (Ahmed, 2020).

In 2018, Tata Institute of Social Sciences conducted a social audit in 110 government-run as well as aided institutions in Bihar and submitted its report to the state government. The girls in these homes aged 7 to 17 years have been sexually, physically, and mentally abused by the heads of the institutions, the chairman, and members of the local child welfare committee as well as the local political leaders (Singh, 2018).

Kalpana got married to Sakthi in February 2006 and moved to her matrimonial house in Chennai. Sakthi and his parents demanded Rs 50,000/ for buying household articles. She died in September 2006. The trial court awarded three years' sentence to Sakthi and his parents under Section 498A and seven years' imprisonment under Section 304B for her death under unnatural circumstances. On appeal, the High Court held that the demand for Rs 50,000/ was for buying household articles for establishing a separate family; hence, it cannot be construed as a dowry demand. Also, Kalpana was 'a sensitive person and quarrel was working on her mind and prompted her to commit suicide' (The Indian Express, 2019). Kalpana lost her life, but the court blamed her for being sensitive.

These and many other such incidents show how the state has failed to guarantee the right of women to a life free from violence. These are not isolated incidents but part of a larger systemic, structural, and regressive oppression in which men assert their dominant positions and violate women's dignity and rights knowing that they may not be punished. They are sure that women in vulnerable positions will not speak about the gruesome incidents. Or perhaps, these men who commit horrific crimes are aware that the system—the police, the administration, the judiciary—practically side with the abusers. The reasons may be political or it may be social or cultural; it may be related to caste, politics, religion, or gender combined or the patriarchy alone, yet impunity exists. The culture of violence with impunity is reiterated by the law and the society. Ban Ki-moon, the former Secretary General of UN stated,

Impunity for violence against women compounds the effects of such violence as a mechanism of control. When the state fails to hold perpetrators accountable, impunity not only intensifies the subordination and powerlessness of the targets of violence, but also sends a message to the society that male violence against women is both acceptable and inevitable.

(OHCHR, 2012)

Globally, the connotation of sovereign state and citizenship remains masculine. Women's rights could not be enforced into practice for decades, because the very institutions entrusted with the duty to enforce these rights are part and parcel of the discriminatory culture. Toxic masculinity is intertwined with the way the institutional dynamics operate to exclude women.

Law does not deal with toxic masculinity

Toxic masculinity implies the collection of norms, beliefs, behavior, and stereotypes that entails emphasis on aggression, hyper-competitiveness, autocratic norms, chauvinism, tendency to glorify violence, sexism, misogyny, heteronormativity, asserting privileges and entitlements, objectification and infantilization of women, and similar such behavior that is harmful. Connell (1995) noted

when the term toxic masculinity refers to assertion of masculine privileges or men's power, it is making a worthwhile point. There are well known gender patterns in violent and abusive behaviors.

This term originated in the 1980s and 1990s. Toxic masculinity justifies, normalizes, reproduces, and exacerbates structures of oppression and

exploitation while perpetuating inequalities (Salter, 2019). Kupers (2005) described toxic masculinity as

the constellation of socially regressive male traits that serve to foster domination, the devaluation of women, homophobia and wanton violence.

(pp. 713–14)

Connell (1995) theorized that the masculine ideals such as physical strength and sexual potency become problematic when they set unattainable standards. Falling short of these standards makes men feel anxious and insecure that may drive them to use force and domination. Connell and Messerschmidt (2005) explained the ‘hegemonic masculinity’ as the pattern of practice that allowed men’s collective dominance over women. Hegemonic masculinity entails a two-pronged approach—one is domination over women and second is hierarchy of dominance between men in society (Buchanan, 2012). Scholars have related the role of hegemonic masculinity to the role of men in conventional crimes such as rapes, hooliganism, white-collar crimes and assaults besides numerous other noxious configurations. These toxic social norms tend

to generate themes of masculine oppression, patriarchal power and control over women and children, which are then replicated from generation to generation. Collectively negative gendered messages about femininity and masculinity may play a role in tolerance of intimate partner violence.

(Berger, 2018)

The role of the legal system in such a context is to transform the culture in a positive way by eliminating the toxic masculinity. Law can be a powerful tool to influence and effectuate change through the practice of re-norming. Yet frequently, the legal system emphasizes the manliness while stigmatizing the femininity. For instance, the courts often ask questions such as ‘why didn’t she just leave?’ Instead of asking ‘why did he abuse her?’ (Berger, 2018) Such stereotypes blame victims instead of holding men accountable for their violent actions. Male authority is preserved by treating women as inferior, subjugating them, and objectifying and treating them as commodities (Crooks, 2019). Gendered norms and implicit biases create a culture that condone violence. Professor Ifill (2000) wrote,

The law contains deeply gendered narratives. Stories about the physical strength, emotionalism, vulnerability, virtuousness or wantonness of women can influence how legal-decision makers evaluate cases involving women litigants, witnesses, lawyers and

judges. Feminist scholars have described how women narratives can affect legal decision-making. These scholars have explored the unique role that gender perspectives play in the development of legal theory and interpretation. In so doing, they have identified the male-centered narratives that ungird legal norms and doctrine.

The law normalizes and delineates what society tolerates and what is permissible by reinforcing the patriarchy, silently condoning gender violence, not providing remedies to the victims of violence, or limiting the remedies. Therefore, law plays a significant role in reinforcing the toxic culture. For instance, almost a century back, the law legally allowed men to beat their wives in order to discipline them (Dobash and Dobash, 1978). The 'Rule of Thumb' embodied the law of Chastisement that permits a man to beat his wife with a rod as long as its circumference was no greater than the girth of a man's right thumb (Smith, 2001). It is therefore significant to highlight the nexus of law and society to understand the dynamics and proactively minimize gender violence.

Privileges and entitlements in an unequal society

McIntosh (1986) used the term 'White Male Privileges' to describe the conditions that confer dominance to some groups to systematically 'over-empower certain groups', because of 'one's race or sex'. These privileges according to her are unjust and unearned. She stated that,

I was taught to see racism only in individual acts of meanness, not in invisible systems conferring dominance on my group.

She further elucidated that

White privilege is like an invisible weightless knapsack of special provisions, maps, passports, codebooks, visas, clothes, tools and blank checks.

(McIntosh, 1990)

McIntosh describes that those who enjoy systemically unearned advantages by being the members of a privileged group may appear 'foolish, ridiculous, infantile or dangerous' (p. 15) in contrast to those who don't.

Privileges operate in a ubiquitous but indiscernible manner, where a section of society always is in a position to enjoy unseen unjust benefits despite the constitutional provisions of nondiscrimination and equality. Privileges entail assertion of the masculine ideology that reinforces the male hegemony through brutal social and sexist hierarchies while polarizing the society to create 'Us vs Them' or 'Others'. In his seminal *The Souls of White Folk*,

W.E.B. Du Bois (1920) demonstrated the linkage between race and imperialism and held that this process of discrimination dehumanizes nonwhites besides overlooking the sufferings of blacks, turning them into less humans. In his yet another piece *The Souls of Black Folk*, Du Bois (1903) examined the consequences of racism and discrimination and argued that these systemic forms of oppression lead to separate spheres of life, physical abuse, paternalism, and economic disenfranchisement besides certain less visible yet equally detrimental consequences like angst, conflicted identity, self-hate, self-doubt, and a lack of industriousness and self-reliance. He wrote that the 'psychological wages' of being white enable the poor white to feel superior compared to the poor black.

Fanon (1952) used the term 'othering' in the context of racism, while Said (1979) coined the term 'orientalism' where in order to construct the image of self as civilized, enlightened, rational, and dynamic, 'others' are portrayed as backward-thinking, irrational, and static. Similarly, Ansley (1989), while elucidating on the concept of white supremacy, explained that,

By 'white supremacy' I do not mean to allude only to the self-conscious racism of white supremacist hate groups. I refer instead to a political, economic and cultural system in which whites overwhelmingly control power and material resources, conscious and unconscious ideas of white superiority and entitlement are widespread, and relations of white dominance and non-white subordination are daily reenacted across a broad array of institutions and social settings.

Likewise, in a conservative, patriarchal, stratified, casteist, hierarchical, unequal Indian society, the undeserved 'Male Privileges' besides the unwarranted advantage of being a 'Hindu' hailing from an 'Upper Caste' and 'Elite Class' play a significant role in defining the social status of a person. This supremacy confers upon him the voice, the dominant position, the decision-making authority, and the power to otherize and to dehumanize those at the margins (Nigam, 2016b). These systematic structured unearned privileges operate unjustifiably, invisibly and visibly, knowingly or unknowingly. These matrixes of privileges are interrelated, interconnected, intersecting, and interlocked and operates together in a manner that reiterates and strengthens the structures of oppression. These socially sanctioned prerogatives conferred upon a person operate together to legitimize his superior and authoritative position, on the basis of which he subjugates others, including the poor, women, minorities, and those from lower castes.

The 'psychological wages' of being born as a rich, Hindu, upper caste, male entitles one to feel superior and thus at an advantageous position. Also, there exists a social, economic, political, and cultural system that allows the control of this privileged group over power and material resources as well as

the authority to determine ideologies, and thus, operate invisibly to benefit those in command. Undue advantages to a particular segment of the society though are unjustified and unreasonable, yet these become part of a collective psyche and are inherently internalized by both parties—those who enjoy the benefits of the privileged position and those who do not. Thus, for example, when the women's movement demanded the reservation for seats in the parliament, most of the male legislators deployed clever tactics to oppose this claim. Also, the Supreme Court, dominated by the male judges, while adjudicating about the issue of appointment of judges or on triple talaq, failed to deny the opportunity to women judges (Nigam, 2015b).

Unearned and undue advantages of being a male in a patriarchal society

In a patriarchal society such as North India, men enjoy the undue and unearned advantages. For instance, the celebrations on the birth of a son are a lively example of how the privilege operates. Girl child is aborted or murdered after her birth, resulting in a skewed sex ratio. Men enjoy undue advantages within the domain of household as they control the resources, control women and children, and make decisions. All forms of restrictions are being placed on women. A paternalistic approach is used to confine a woman, her mobility, her decisions, and her autonomy. Often, these privileges operate to oppress women not only within the private domains of families but also in larger social arenas. Multiple patriarchies operate simultaneously to disempower women and to regulate their behavior (Shepherd, 2018). Such conditioning generates the patriarchal underpinning of impunity.

Violence in the culture of nonviolence

Moreover, contradictions exist when violence is inflicted against the marginalized groups in the civilization that is known for its culture of nonviolence or *Ahimsa*. The country, for ages, is known for its principles of nonviolence or disinclination to harm even an animal. The common notion propagated about nonviolence is to rise above the common existence and ideally practice vegetarianism, impliedly, non-killing of animals for human consumption. The roots of *Ahimsa* lie in the Vedic texts and traditions. Nonviolence is, hence, a cultural ideal for Hindus, desirable and attainable for the making of a civilization. *Ahimsa*

represents not a political doctrine, or even a social theory, but emotions of the horrors of killing (or hurting) a living creature, an emotion that we will see attested from the earlier texts.

(Doniger and Smith, 1991, pp. 9–10)

This doctrine of *Ahimsa* has been used by MK Gandhi against the colonial rulers. Guha explained that Gandhi used nonviolence as a tool for not just the moral legitimacy but also for political efficacy and as a moral force to shame the oppressor (Ghoshal, 2018).

However, in postcolonial India, the principle of nonviolence seemingly is not practiced. Most of the vulnerable groups such as women, children, Dalits, or minorities have evidently faced intense violence at some point or the other in the form of mob-lynching, riots, mass rapes, exterminations, pogroms, so on and so forth. Starting from the Partition of the country till today, the incidences of violence have escalated against those on the margins. The religious or social norms, moral codes, the constitutional philosophy, or the legal paradox have failed to prevent or deter privileged men from inflicting violence on vulnerable groups. More specifically, in the private sacred domain of the home, violence against women is justified on the grounds of a man's right to control and discipline women and children.

Conservatism and violence against women

The Hindu mythology, religious scriptures, and traditions, including the laws of Manu or the *Manusmriti*, see women as an appendage of a man as a father, a husband, or a son (Olivelle, 2004). Brahmanical supremacy views women as inferior 'others' and places women in a secondary position. The laws of *Manusmriti* extol and reinforce birth-based inequalities based on caste and gender. Ambedkar (1935) in his work '*Annihilation of Caste*' argued that the Hindu religion as contained in the Vedas and the Smritis is a 'mass of sacrificial, social, political and sanitary rules and regulations' (para 23 sub para 3). He called it 'a multitude of commands and prohibitions'. Almost every *shloka* of *Manusmriti* is devoted to preserving inequality within the families and the communities (Doniger and Smith, 1991). The traditional text has been persuasively exploited over centuries to enable society to perpetuate women's oppression by a

particular class of men, Brahmins, who have vested interest both in maintaining their status and controlling female population.

(Gupta, 1994, p. 213)

Religious and cultural norms make a tremendous impact on the daily lives of men and women. This scriptural validation of Hindu text is

used as a political and social tool by the fundamentalists forces through ages to justify and perpetuate oppression of Hindu women.

(Gupta, 1994, p. 212)

Chakravarti (1993) shows how the process of caste, class, and gender stratification has shaped the Brahmanical patriarchy over considerable time and the way it exerts control on the upper caste women not only through patrilineal succession or seclusion but also to maintain caste purity through controlling women's sexuality. According to her, during the Vedic period and in the post-Vedic era, patrilineal succession was established and methods have been developed to control women. At the general level, women are painted as sinful, liars, jealous, treacherous, angry, and mean. The *Jataka* stories and several other literature label women as wicked, slanderous, and cruel. Epics such as Ramayana and Mahabharata also describe women as impure, innately promiscuous, adulterous, fickle-minded, and unfaithful. It is Manu, the most prominent ideologue, who directed that women as wives must be closely guarded if a man has to preserve the purity of his offspring, his family, and his means of acquiring merit. A wife occupies a crucial place in the entire social order that enables a man to gain immortality because she bears sons. Men are, therefore, dependent upon women to perpetuate the social and moral order, and, hence, there is an obsession to control the women's sexuality. The caste system further maintained graded violence against women (Rege, 2013). Endogamy has been strictly practiced through child marriages, sati, and enforcement of widowhood.

According to Chakravarti (1993), the mechanism to control women operated at three levels through three devices. One was at the ideological level, in which women internalized the ideal notion of womanhood, aspiring to chastity and fidelity as the highest expression of their selfhood. This notion of *pativrata* woman is being reinforced through the customs and rituals while epitomizing wifely fidelity through the cases of Sita, Savitri, Anasuya, Arundhati, and a host of similar figures while ignoring others such as Durga, Kali, and other mythological characters. Second, the authority of male kinsmen is backed by the potential right to use coercion and physical chastisement of women who violate social norms. The power to use violence vests majorly in the husbands to monitor her behavior and ensure control. The third mechanism of control as envisaged in the ancient culture vests the authority upon the kings. The basic purpose is to structure the social relations by achieving the compliance of women. This compliance was produced through a combination of consent and coercion.

The practice of the caste as well as the patriarchy, though debated, continued to remain firmly embedded within the social structure over centuries. During the colonial rule in India, the British rulers connived with the religious scholars and interpreted the laws against the interest of women. As many scholars noted, that colonial jurisprudence led to the '*Brahmanization*' of the Hindu personal laws and '*Islamization*' of Muslim personal laws (Parashar, 1992; Menski, 2003; Nair, 2012). The colonial rulers also curiously weaved in the notions of Victorian morality and English legal concepts

within the local religious strands to make a strong patriarchal fabric to deny women rights within the arena of the family. Colonial rule evoked militarization as well as nationalism, all of which strengthen the masculine social order. Colonialism instilled masculinity as Western men exploited the local colonial women and used them as sex symbols (Enloe, 2014). The identity of a woman was constructed along the religious lines by applying separate religious laws for each community in the realm of the personal and this system continued in postcolonial India. Attempts to reform religious laws were met with strict confrontation and therefore not much efforts have been made in these directions.

In postcolonial India, the conservative mindset clubbed with the Victorian ideology opposed the Hindu Code Bill, introduced by the then-Law Minister, Dr BR Ambedkar. The bill strived for equal rights for women but was met with antagonism from the various sections of the orthodox communities over its perceived interference with religious matters. Among its staunch opponents were religious leaders, members, and organizations relating to the Hindu right-wing, and even some members of Congress. The passage of the bill was deferred several times as it met vehement opposition in the Parliament. Those opposing the bill used the religious narratives while opposing the progressive elements, such as introduction of the concept of divorce, monogamy, maintenance for the wife, equal shares of daughters in the property, and called the process of amending the laws a conspiracy hatched against Hindu sentiments. The Hindu Mahasabha, the Bhartiya Jan Sangh, and other organizations used the rhetoric of ‘defamation of Hindu religion’, ‘religion in danger’, ‘imposition’, and conspired to resist the bill (Sinha, 2012). In March 1949, an All India Anti Hindu Code Bill Committee was constituted that claimed that the Constituent Assembly has no right to interfere with the personal laws of Hindus that are based on *Dharamshastras*. The participants of this movement presented themselves as religious warriors or *Dharamveer* fighting a religious battle or the *dharma-yudh* (Guha, 2007).

A group of men organized a public rally on 11 December 1949 at the Ramlila ground in Delhi. Almost all the speakers condemned the bill and deemed it against the preaching of *shastras*. One called it as ‘an atom bomb on the Hindu society’ while another equated it with the draconian Rowlatt Act. The next day, a group of RSS workers marched on the assembly buildings, shouting ‘Down with Hindu code bill’. The protestors burnt the effigies of then-Prime Minister Pandit Nehru and Dr Ambedkar (Guha, 2015). Ambedkar resigned from the position of the law minister in October 1951. One of the reasons he gave is that ‘Despite the coming of political independence, and a constitution protecting rights, they faced the same old tyranny, the same old oppression and the same old discrimination’. Later, Nehru fragmented the bill into four parts, citing the reason for the smooth passage of the bill. Consequently, the Hindu Marriage Act

(HMA), Hindu Succession Act (HSA), Hindu Minority and Guardianship Act, and Hindu Adoption and Maintenance Act were passed between 1952 and 1956. The opposition still erupted when the Hindu conservatives used the language of sanctity of marriage and loosening of family bond, and termed divorce as a Western concept (Singh, 2005). This conflict between modern progressive values and traditions was visible at the time of the drafting of the Constitution as well as the during the making of the Hindu Code Bill and it continues to exist today in the 'New', 'Shining', and the 'Atam-nirbhar' India.

This orthodox position is ossified during the later period when the so-called secular state refused to challenge the religious hegemony that operates through the personal law regulation. Fueled by the violent legacy of Partition, the spectacular rise of the nationalist politics along with the emergence of *Hindutva* influenced the nature and space for women's rights groups' engagement with the state. Identity issues such as caste, religion, and class influenced the way the state approached the question of gender equity. Also, the understanding that emerged regarding personal laws pitted the 'progressive' Hindu law against the 'regressive' Muslim law while discriminating against the women of all religions within the family (Agnes, 2011a). The notion that the law is a neutral, objective, and rational set of rules, therefore, does not hold true in the Indian context.

Jaising (2005) opined that in matters relating to the personal laws, the courts do not conduct an in-depth analysis nor invoke the principle of sex equality to eliminate the discrimination within families. Rather, at the macro level, the operation of law is determined by the passion and perspective of those who wield the power inherent in the law and the legal institutions. At the micro level, the operation of law is determined by the actual day-to-day operations in the courtrooms, police stations, and other informal legal institutions instead of the rules or doctrines set forth in the statutes or laws (Agnes, 2011b). In fact, the courts have utilized the technicalities or read down the discriminatory provisions rather than declaring these as unconstitutional as evident from the texts in cases of *Githa Hariharan v RBI* (1999), *Danial Latifi v Union of India* (2001), or *Madhu Kishwar v State of Bihar* (1996), where the court held that

We would rather refrain from striking down the provisions as such on the touchstone of Article 14 as this would bring chaos in the existing state of law.

The courts thus seemingly are

paralyzed by the fear of being tarred by the brush of cultural insensitivity.

(Mackinnon, 2006b, p. 199)

Avoiding the direct confrontation with the communities and the communal politics is a major tendency deployed by the ruling regimes over years.

In the 'New India' or the '*Hindu Rashtra*' as being promoted by the BJP government after its victory in the Lok Sabha elections in 2014 and in 2019, efforts are being made to espouse the regressive ideology as enunciated in the *Manusmriti*. This ideology is being used as the weapon to assert the majoritarianism and to widen the polarization to implement laws and policies to deny claims made by the Dalits, Adivasis, and women. The misogynist attitude against the women is finding a strong resonance among those ruling this country for the past seven decades. However, these sentiments are growing much stronger in recent years as evident in the lack of concern for the safety of women reflected in the incident that took place where a 19-year-old Dalit girl was gang-raped on 14 September 2020 in Hathras, Uttar Pradesh, by four upper-caste men. Her spinal cord was injured and her tongue was cut off. The perpetrators strangled her. Two weeks later, she died in a hospital in Delhi. After her death, the victim was forcibly cremated by the local police without the consent of her family. A complaint was registered only after an outrage. Several groups held a rally in support of the accused persons. The 2,000-year-old text is being used to deny justice to the victim and to protect the accused (Ali, 2020). The police and the administration botched the matter. The UP government claimed that the incident is a 'deep rooted conspiracy' and an 'international plot' to defame the government. The Allahabad High Court took *suo moto* cognizance after her forced cremation (Rashid, 2020). Thus, patriarchy, religious hegemony, caste privileges, and wealth inequalities operate together to reinforce the culture of oppression.

Misogynist popular literature

Currently, the primitive patriarchy continues to reign in all aspects of lives—religious, social, moral, and philosophical, while writing 'his-story'—a tale that it is writing to suppress women (Holland, 2006) and while ignoring women's immense contributions in sustaining and nurturing society through their visible and invisible work. More specifically, when it comes to upholding the rights of women within the confines of domesticity, the constitutional courts reiterate the traditional orthodox agenda shaped by the multiple patriarchies. The framework consisting of culture and religion is utilized to address the concerns relating to family violence instead of the legal or the constitutional dimensions.

The philosophical moorings regarding the second-class status of women continue to be strengthened and reinforced by the popular religious literature. The age-old myths are reinforced and retold verbally or in other ways. Most of the available literature is the distorted representation while denigrating women and preaching violence (Islam, undated). For instance,

several publications by Gita Press, Gorakhpur that publish low-priced literature espousing the Hindu life such as *Nari Shiksha* by Hanuman Prasad Poddar (Women's Education), *Striyon ke liye kartavya shiksha* (Educating about the duties of women), *Nari Dharm* (Women's Duties) by Jai Dayal Godinka, and others claimed to quote heavily from the holy texts such as *Vedas* and most importantly from the *Manusmriti* (Islam, 2016). These books preach about being a subservient wife and an ideal woman. Similarly, for the Muslim women, available literature such as *Mian Biwi ke haqooq* (Rights of husbands and wives) by Mufti Abdul Ghani and *Musalman Biwi* (Muslim wife) by Maulvi Idris Ansari preach about the responsibilities of wives and not of the husbands (Islam, 1993). This misogynist literature by both the Hindu and Muslim fundamentalists subscribe to a similar school of thought that is blatantly anti-women. This literature advises women to tolerate wife beating graciously and patiently.

To elaborate, one of the booklets published in 1990, being sold by Gita Press¹ titled *Grihastha Mein Kaise Rahen*² (How to stay within the Matrimony), while preaching on how to live marital life in a Hindu way, advised that wives, in case of being beaten by their husbands, should bear it silently while believing that it is a sin of one's past life or a debt that one has to repay in this life and that one is getting purified this way and may achieve salvation. It explains, "If a husband physically abuses his wife what should she do?" (p. 70) (Translation mine). While answering, the author described,

The wife should understand it is because of her sins in the past life that she is repaying and she may achieve salvation. In case, her natal family came to know that she is being physically violated, they can take her back because they have not arranged her marriage so that she could be abused.

The next question is "If her natal family refused to take her, in such situation what should she do?" It is answered that,

she should bear the violence thinking that she is repaying for her sins because being vulnerable she can't do much. She must bear the violence silently and patiently because this way it is possible that her husband may shower his affection one day. In case she is unable to bear violence, then she should take permission from her husband to stay separately and must spend her life praying while also earning for herself.

(Translation mine from p. 70)

This misogynist literature being read by millions of readers, both men and women, across the country reiterates regressive patriarchy and erroneously

suggests that bearing violence is the destiny of a woman. This form of literature is seen as more sacrosanct than the constitutional values that endorse the vision of equality and justice. The state has done little to curb the anti-women literature that is dehumanizing and degrading. The secular state is following the theocratic agenda when the discussion pertains to women's rights and therefore, women remain at the lowest end, battered, unprotected, defenseless, and vulnerable. The politics and religion as practiced over decades celebrate the subjugation of women.

Further, the misogyny is also evident in the work of the *Rashtriya Sevika Samiti*, a Hindu nationalist organization, parallel to the *Rashtriya Swayamsevak Sangh* (RSS), and is known as the women's wing of the RSS.³ It unapologetically promotes the idea of 'Hindu *Rashtra*' and provides young girls with lessons rooted in patriarchy (Bacchetta, 1996). According to this notion,

A woman within the understanding of RSS, has no individual identity; her only identity is associated with the various roles she plays within a family unit. She isn't supposed to work and be independent or do anything that varies from her associated gender roles. The organization subtly indicates that families break because of women stepping out of the house through their teachings to young girls about how to keep family united: by being a good wife and a good mother and letting the men deal with the task of earning money.

(Gupta, 2017)

This chauvinist ideology is not supported by the theoretical studies or documentation, yet it finds a practical appeal with its members (Sharma, 2016). What is promoted is the concept of 'family-ism and not the feminism' as it prefers '*dampatya*' or conjugal life while upholding the patriarchal notion of honor. These ideas are perhaps guided by Gowalkar (1966) who in his writing *Bunch of Thoughts* in a chapter 'Call to Motherhood' implores women to be ideal mothers, to teach their sons the idea of Hindu nationalism, and desist from being modern or Western. It endorses the view that women play a crucial role in nation building and for that they need to make sacrifices as mothers and wives. It sees domesticity as the sole purpose of women's existence and 'never empowers women and alter gender relations in the household' (Dixit, 2013). Similar to the ideas propagated during the Nazi regime (Mosse, 1996), this ideology sees women as nurturers who impart patriotism to their children (Venugopal, 2016).

To address the issue of being a victim of wife beating, the Samiti clarifies,

Don't parents admonish their children for misbehaviour? Just as a child must adjust to his/her parents, so must a wife act keeping in

mind her husband's moods and must avoid irritating him. Only this can keep the family together.

(Dixit, 2013)

Chastisement is being pushed as a norm in which the husband is considered superior to his wife. Similarly, divorce is not an option that is made available to women. As one of the members explained, 'Our task is to keep the family together, not break it. We tell the women to adjust' (Dixit, 2013). The Samiti believes in 'low priority, non-innovative, routine-bound existence and it is that passivity and unquestioning attitude'. Young girls are being indoctrinated in this. They are being brainwashed with the idea of the Hindu nationalism that sought legitimacy in the notion of female selflessness, sacrifice, and martyrdom. The image of sustaining, nurturing community is used to undercut the attacks by the left on the social and political hierarchies, including the demands for greater autonomy to women or emphasis on equal rights (Dixit, 2013). This ideology is hence promoting the misogynistic notions in which wife beating is justified on the principle of discipline and control of women in contradiction with the existing laws that criminalize the domestic violence. This idea constrains women through the patriarchal domination and cannot be seen as an alternative to feminism (Sen, 2007). Patriarchal underpinnings of impunity come from this culture of violence that associates manliness as a capacity to put women in her place.

Impunity operates to penalize the complainant for speaking up

The culture of male impunity is deeply engrained, accompanied by the sense of male superiority that any woman who dares to speak is forced to face the threat of persecution, trauma, shame, and harassment. She is being re-victimized when the law is used as a tool again to harass her in multiple ways. For instance, in the wake of the MeToo movement, world over, survivors who speak about their experience have faced defamation lawsuits by those who are implicated. In India, in 2018, many women named high-profile men as sexual harassers in academia, journalism, news media, and entertainment industry. One of the famous cases that was in the limelight is that of former union minister MJ Akbar who has a filed defamation lawsuit against one of the 20 women who accused him of sexual harassment. He hired the services of a top legal firm and cited the MeToo movement as a political agenda that was used to defame him (Harlankar, 2018). Though he eventually had to step down from his job as a minister, he seemingly deployed several strategies and tactics to fight the legal battle (Tripathi, 2018). This case is dismissed by the trial court in February 2021; however, it reveals how the male hegemony is deployed

against the survivors, using the law as a tool. Misogyny is, therefore, a systematic social phenomenon that is hostile to women who voice their concerns, where power is deployed in manifested or hidden form by the powerful men to oppress women.

Women who raise their voices against violence are being threatened and harassed in multiple ways by men who abused their power and resources to turn the law against the victims to re-victimize them. For instance, in the Ruchika Girhotra molestation case, a 14-year-old girl was molested by the Inspector General of Police in Haryana in 1990. It took three years to register her complaint (Bhardwaj, 2009). The victim, her family, and her friends all were harassed and tortured after she made a complaint. Eventually, she committed suicide. The CBI botched up the matter (Sandhu, 2009). After 19 years, the court finally pronounced Rathore guilty under Section 354 IPC and sentenced him to six months imprisonment with a fine of Rs 1,000/-. The irony is that in 2018, the same cop was invited as a VIP at the Republic Day Parade in Panchkula while the girl's family suffered in hiding and his brother could never recover from the trauma of false charges and repeated torture by the police (Gupta S., 2018).

On 5 August 2012, Geetika Sharma, 23-year-old woman working as an airhostess, committed suicide. In her suicide note, she accused Gopal Kanda, a former member of the Haryana Legislative Assembly, and one of his workers of rape and harassment. On 15 February 2013, Geetika's mother also committed suicide and blamed Kanda for ruining her family. On 14 March 2014, Kanda was granted bail after the charges of sexual exploitation was dropped by the Delhi High Court. On 19 March 2019, the court, while taking cognizance of the abetment of suicide, revealed that a retired police officer filed a cancellation report without placing the witness statements on record deliberately (Khan, 2019). The legal procedures were twisted to protect the powerful accused persons.

In Kathua in January 2018, 8-year-old Asifa Bano was brutally gang-raped and murdered. This case evoked national outrage (Nigam, 2019b). The trial court found the men guilty, yet the case depicts the misogyny that has permeated the everyday life. More importantly, attempts were made to subvert the trial by a group of fanatics who shielded the murderers and justified the rape as a nationalist act while swaying the national flag. They demanded the acquittal of the accused persons while trying to brazenly shield the rapists. People on the social media fiercely debated if the minor deserved to be raped because she belongs to the Muslim nomadic community while the corporate-owned media spilled venom and propounded the false theories. The Supreme Court intervened to direct in-camera proceedings of the trial and transfer the matter to a different location.

In another instance, a 16-year-old girl was allegedly abducted and raped by Kuldeep Singh Sengar, a 50-year-old MLA from Unnao, UP in June 2017

(Scroll.in, 2018). Police colluded with the rapist to shield him while the father of the girl was taken into custody and was thrashed by the brother of the accused (News Service Division, 2018). In April 2018, the victim tried to immolate herself in the front of the residence of the Chief Minister. Sengar was arrested later but the girl's father was also arrested under the Arms Act and was tortured in custody where he died. In July 2019, the girl was seriously injured in an accident and two of her family members including her mother were killed. Later, it was revealed that the family has been threatened and has written a letter to the Chief Justice of India to seek protection. This case shows how the ugly colors of misogyny operate to undermine women.

In April 2019, a 35-year-old woman who used to work as a junior court assistant at the Supreme Court wrote a detailed letter to 22 other judges alleging sexual advances made by the Chief Justice (Yamunan and Sharma, 2019). The way this matter was handled raised doubts about the fairness of the legal procedures (The Hindu, 2019b). Misogyny further was manifested when the women's organizations that protested outside the Supreme Court while raising the questions over the clean chit given to the CJI by the in-house committee were whisked away by the police (The Hindu, 2019a).

The cases mentioned are just a few examples of how the culture of violence with impunity operates, legitimized, and upheld by the state and the society. The system that is expected to provide safety re-victimizes the victims. There are numerous other cases that indicate that the crimes against women are being enabled by inequalities and injustices that operate at many levels, where the process of law itself becomes punishment for the victim. Ironically, the very system that is designed to uphold the rule of law became a tool of oppression. The male privileges and supremacy clubbed with the upper caste and class entitlements operate with the apparent immunity. The toxic masculinity, the cruelty, and the insensitivities are honed and nurtured over the years to manipulate the entrenched system of power to favor men. The system enables the men to commit atrocities without any fear of the rule of law. The abusers use the police and the court system to retaliate against the victim to harass, coerce, terrorize, and intimidate the complainant to silence her. The sanctity of the rule of law is violated and the excesses are justified and covered up by the state apparatus. The calculated nature of negligence in the police actions speaks volumes about the power and control exerted over victims. Several countries have enacted specific laws against forum shopping to balance the access to justice. However, in India, despite the wide prevalence of such misuse of legal process, this process of the abuse of law is not recognized or acknowledged. Hence, a lot needs to be done to provide quality justice to the complainants.

Elite, privileged, resourceful men silence women's voices through SLAPP

SLAPP or strategic lawsuits against public participation is a term coined by Professor George W. Pring and Penelope Canan in 1992. SLAPP has been used in situations in which common citizens or groups raise their legitimate concerns, report violation of law, write to government officials, file applications under the Right to Information law, attend public hearings, criticize any actions of the ruling elite, testify before government bodies, campaign or lobby for their entitlements, file appeals, or engage in peaceful boycott or demonstration (Pring and Canan, 1992). The apparent goal of SLAPP or frivolous counterclaims is to stop the common citizens from exercising their political rights or to punish them for doing so.

The concept of SLAPP has emerged in the Western countries to denote how the powerful use the law to silence, censor, and intimidate their weak opponents by burdening them with the unnecessary false legal suits until the feeble abandon the process of seeking justice. Such frivolous lawsuits impede the freedom of speech and hurdle the course of litigation. SLAPP suits are routinely filed for libel, slander, defamation, malicious prosecution, conspiracy, invasion of privacy, and tortious interference. An example of SLAPP is that of a powerful corporate suing the local citizens for speaking against the company. Initially, SLAPP is used within the political context in which a dispute that is political in nature is transformed into a technical injury to suppress the real issue. It helps move the dispute from the political platform to the judicial forum (Pring and Canan, 1996).

SLAPP entails multimillion dollar lawsuits, loss of resources, expenses, and the emotional cost to the litigants. It deters and prevents people from speaking up (Wyrwich, 2011). Those who file a SLAPP are not taking actions to win a case but their purpose is to intimidate the opposite party. Victims seldom lose but are devastated emotionally or financially and are depoliticized. In other words, SLAPP has a 'chilling effect' on the opponents. It is expensive and daunting (Pring, 1989). Legally, courts see SLAPPs as ordinary suits and could not distinguish or deal with them. SLAPP creates an environment where the freedom of speech is at risk as it chokes the public discourse about a significant issue. The modus operandi is to bury the complainants in the legal costs and disproportionate legal exercise till they give in.

Specifically, in cases of violence against women, the perpetrators being resourceful calculative manipulators use all kinds of techniques and resources to intimidate the victims to prevent them from reporting the abuse. Also, once the survivors report abuse, the perpetrators pressurize the victim to withdraw the legal cases, and for doing so, the abusers threaten to sue the abused women and file false cases under different laws to pressurize them to give up the course of litigation. As a result, those at receiving

end are facing multiple frivolous SLAPP suits. A SLAPP suit sends a clear message that there is a price for speaking out (Pring, 1989). It involves dragging the opponents through a costly, time-consuming legal battle to make their life difficult. Many countries, such as the USA, the UK, Canada, and Australia recognize and acknowledge these abusive lawsuits and provide remedies against them.

Anti-SLAPP legislation across countries

In many jurisdictions, the law allows individuals to challenge the SLAPP suits early in the proceedings to test if the legal action is for the purpose of silencing the defendant or disabling freedom of speech and expression. These jurisdictions have strategized to quickly out throw the fraudulent or meritless cases meant solely to silence the petitioner. Anti-SLAPP laws are a kind of protection that assists in speedy trials to prevent frivolous suits from harming the complainants. The judiciary has to be hyper-vigilant in ensuring that the rights of complainants or whistle-blowers will not be suppressed due to the frivolous lawsuits.

Anti-SLAPP laws provide civil immunity to the complainant so as not to dissuade the victims from reporting crimes out of fear that they might be sued. Generally, the anti-SLAPP laws has several goals, namely, 1) to provide protection against frivolous lawsuits, 2) to furnish a procedural framework that encourages inexpensive and prompt resolution of SLAPP claims, and 3) to facilitate appropriate reimbursement for fee and expenses incurred by SLAPP suit targets and penalize the plaintiffs (Prather and Bland, 2015).

According to these anti-SLAPP laws, domestic violence victims cannot be sued for reporting such issues. In cases of domestic violence, it is recommended that the courts need to strike a balance between preserving access to justice while preventing retaliatory litigation. It is critical to restore safeguards and protections to support the survivors in combatting the increasing use of retaliatory hazardous suits designed to silence them. Violence against women is a public concern, and, therefore, the framers of the law need to give survivors proper space to voice their concerns.

SLAPP in domestic violence cases

In domestic violence cases, the abuser acts as a coercive calculative manipulator and uses a pattern of behavior to dominate in the relationship. This pattern includes techniques such as humiliation, social isolation, resource deprivation, and emotional or mental abuse besides physical violence to control the victim. When a victim leaves her matrimonial home, she is exercising her autonomy and choice to escape the clutches of the batterer. The batterer, therefore, gets frustrated and angry; in many cases, post-separation assault increases manifold while some kill their separating partners

(Hardesty, 2002). The batterer also exploits the given system. The manipulative abuser tries to stop the victim from sharing her sufferings with the family, friends as well as with the law enforcement.

Batterers use the law as an instrument to retaliate against the victim. The abuser files unnecessary lawsuits against the victim. A legal proceeding against the batterer entails violent repercussions for the complainant. The process of divorce and custody adds to his advantage to continue his abuse and adds a threat of counter-retaliatory litigation. Such actions are a barrier to the access to justice for women. In the courts, the law is used as an extended tool by the batterer to exert control over his victim such as filing a custody suit or a visitation right application to continue his tactics of coercive control over the survivor even after the relationship ends (Conner, 2009). These lawsuits are filed with the calculating motive to harass the women. After escaping the violent situation, frequently with no resources, a victim is forced to face the frivolous lawsuit, worry about the impact of litigation, and engage a lawyer. Court premises become a space where a victim is trapped once again instead of escaping the batterer. Women's security is undermined because the perpetrator may have far more opportunity to exert control over the complainant. Common examples of abuse of the legal process used by the batterers against their victims include:

- Suing or threatening to sue anyone who helps the victim, including friends, neighbors, advocates, lawyers and law enforcement officials. Even the threat of litigation makes it harder for the victim to find help.
- Abusers will portray themselves as the actual victims by seeking their own retaliatory protection orders against the victim, her friends and her family.
- Suing the survivor for defamation if the survivor reports the abuse to anyone.
- If the survivor is an immigrant, abusers will make reports to immigration authorities in an attempt to have the survivor deported.
- Turning child custody litigation into a nightmare is another tactic, including seeking sole custody, abusing the discovery process by seeking embarrassing or irrelevant information about the survivor, trying to relitigate issues that have already been decided by the court and dragging the process out as long as possible by repeatedly seeking continuances.
- And even after a divorce is final, abusers can force the victim back into court time and again by seeking to modify parenting plans or child support orders, or by bringing contempt motions against the survivor. Regardless of the merit of the motions, the victim is still forced to go back to court

and confront the abuser, miss work and spend money on attorneys.

- Judges may be also targeted if the judge rules against the abuser, wherein the abuser attempts to have the judge disqualified from the case.
- And if the abuser loses in one court, they may bring similar litigation in a different court in order to prolong the litigation abuse.

(Bonsignore, 2012)

Family courts do not recognize this pattern of abusive litigation, and, therefore, it becomes difficult for women to seek relief from the legal system that is already daunting and frightening. The fear of violence multiplies with the fear or threat of litigation as the very place where the victim is supposed to turn for protection itself becomes the site for inviting risk of hazardous counter-litigation. The batterer continues his exploitative tactics within the courtroom while undermining the safety and security of the victim. Survivors sadly lack resources or the information to obtain legal assistance when battling abusive partners who may be using all resources to trap their victims, and, therefore, the complainants suffer extensive economic and emotional repercussions. Because of such bogus, vexatious litigation, survivors are being compelled to repeatedly appear in the courts when they are probably in the phase of emotional recovery.

The fear of reprisal, impunity for attackers, and attitude of condoning violence already deter reporting of crime of domestic violence, and the SLAPP litigations further add to the trauma of complainants. Offenders use the courts to control the life of the survivor. Protection orders are violated and result in little safety or of any tangible consequences to the victims. Family courts, therefore, act as another alternative site of abuse used by the batterers to exert control over the victims. Countless mothers are being forced to live in fear that the courts may compel them to rejoin the company of violent men. Mothers are frequently afraid of losing the custody of their children. For spelling out the dangers children face, mothers are being accused of parental alienation causing emotional harm and of poisoning the children against their fathers.

SLAPP in India

In India, the concept of SLAPP is not recognized by the law. Rather, currently the law is being used as a tool for repression against social movements and social activists. The state in India even earlier has used SLAPP against students and human rights activists where those activists, lawyers, poets, academicians, and others who raised their voice against government policies are being arrested.

Despite the fact that the Constitution of India provides for the right to remedies in cases of the violation of fundamental rights under Articles 32 and 226, no immunity is provided to those who seek to assert their constitutional rights in many situations. The legal or the judicial landscape has failed to protect the whistle-blowers as they are in danger of being abused by the rich and resourceful. Though the rights to public participation have been recognized as human rights and the citizens' involvement in governance is a hallmark of democracy, the fact that SLAPPs are a contradiction to these fundamental principles is not recognized by the state.

The law in India is still in a rudimentary phase. Section 250 of the CrPC allows the Magistrate to order the complainant to pay monetary compensation to the accused in case the accused persons are acquitted. Also, some of the states have formulated the law to prevent 'vexatious litigation'. For instance, Madras has enacted the Madras Vexatious Litigation (Prevention) Act, 1949 and in Maharashtra it is called as Maharashtra Vexatious Litigation (Prevention) Act, 1971. The Madhya Pradesh House passed a bill in 2015 to prevent 'vexatious litigation' without any debate (Ghatwai, 2015). The idea behind such law is that the court's time should not be taken up by those who litigate persistently without a justifiable cause. However, the activists claim that the law making process is 'unconstitutional and undemocratic'. No debates are being held; instead the state uses these laws to prevent the common citizens from exercising their democratic rights. These laws are seen as an attempt to keep people away from the process of governance and are meant to stifle the democratic voices of citizens.

The Law Commission (2005) in its 192nd report on prevention of vexatious litigation recommended enacting the law to 'prevent a person from instituting or continuing vexatious proceeding habitually and without a reasonable ground in High courts and subordinate courts'. The report claimed that the law will provide legal protection to the law-abiding persons from the vexatious litigation pursued against them. In its 189th Report, the Law Commission (2004) has also recommended to enact the national law on the subject. In fact, the Supreme Court in 2010 outlined the Maintainability of Public Interest Litigation Rules that made it mandatory for petitioners to disclose their credentials and motives. The purpose is to prevent frivolous litigation that clogs the judicial process. The courts are also imposing heavy penalties on petitioners who file frivolous litigations. Therefore, apparently, the purpose of enacting such regulation in India is not to support the vulnerable party in the litigation but to prevent the people from approaching the courts. It is necessary, therefore, to debate and draw an exhaustive plan to differentiate between the vexatious complaints, malicious prosecution, miscarriage of justice, and the SLAPP suits. More specifically, the rights of the marginalized communities need to be protected in situations when the powerful abusers use the law and the court procedure as a tool to harass the victims.

SLAPP in domestic violence cases in India: To harass women, husbands and in-laws counter-file cases

The privileged men use the law as a backlash strategy. SLAPPs as retaliatory abusive suits are being used to deter, threaten, and intimidate the complainants regardless of the merit of their complaints. There is a general tendency to silence women as they speak out or challenge the patriarchal norms. Women are forced to make repeated court appearances to defend the lawsuits. The sexist and misogynist approach of society places restrictions to prevent women from raising their voice, and the moment a woman does so, several strategies are deployed to silence them. The idea of filing a SLAPP suit is to harass the victim knowing that she lacks access to resources or money to fight the court battle. The battered woman who is already vulnerable may get intimidated and decide to withdraw the complaint already filed.

In a violent relationship, a woman when violated may have pleaded, confronted, negotiated, and requested and may have persuaded the abuser umpteen times to not inflict violence before making her complaint public. She may use her family or other network to convey to the perpetrator to treat her with dignity. The abuser knows that a woman's sense of self-worth is destroyed every time he abuses her. Yet knowingly and intentionally, he takes every step to undermine her dignity, knowing that she is in no position to harm him back. When a woman calls her family or his family members to intervene, the abuser is confident that he will be in a position to manipulate and control her version of the story to portray himself as innocent. The abuser knows that any intervention from outside, either by counselors, police, or courts, will not make an impact, because he is in a position to twist and manipulate the situation. He is aware that the society and state actors will not believe the victim's version and he can clearly get away with his wrongs because the prevalent culture portrays the woman as a liar and untrustworthy. Further violence is used to silence her. An abuser deploys techniques such as emotional and mental torture; stigma; shaming the victim; and contacting her friends, neighbors, and acquaintances to stigmatize her. The more vocal she is about her sufferings, the more ferocious the attack is on her personhood.

Both the structure and the implementation of law contribute to the widespread impunity. Judges resist issuing the restraining order and the police refuse to apply them because it can violate the perpetrators' rights. Courts accused women of overreacting and disrespecting the sanctity of the family. Misogyny operates in the courtrooms to silence the voices of women while systematically excluding them and undermining their testimonies, which Fricker (2007) called the 'credibility deficit'. The criminal justice system is not victim friendly. Impunity operates to make violence invisible. The abuser uses SLAPP suits to use the law as a tool to pressurize the victim to withdraw her complaint.

The batterers use various tactics to humiliate their victims, causing their social isolation, inducing fear, and causing their resource deprivation. Often, husbands retaliate using the remedy for restitution of conjugal rights to deter wives who file complaints under 498A. In many cases, when women file claims for maintenance, the resentful husbands file counter-petitions such as divorce applications, custody suits, or visitation applications to defeat the women's claims. Women who have faced abuse in violent homes for years are again abused in courts, where the law is being used as a tool by the manipulative and controlling husbands to harass their wives.

In the maintenance cases, the husbands, if in private jobs argue that they have lost their jobs to counter the claims made by the women. Since it is difficult for women to prove the actual earnings of their husbands, often they end up getting little in terms of justice. Using lame excuses, husbands intentionally refuse to pay money, including school fees for kids. Execution applications take months; meanwhile, appeals are being filed against the trial court orders, in case trial courts pass orders in favor of women.

In case a woman chooses to exercise her rights under the PWDVA for the right to residence, various pressure tactics are utilized to throw her out of her matrimonial house. In case the matrimonial house is rented, all other members of the house move to some other locations. Parents-in-law file vexatious eviction suits against women who claim their right to residence. Children are used as pawns in the custody battles to harass the mother, but when it comes to fulfilling responsibilities toward the children by paying maintenance, the father hides in some remote corner.

In situations when victims already are deprived of resources and facing hardships, additional abusive litigation drains them financially and emotionally. The inability of the victims to hire a battery of lawyers to counter the power asserted by the batterers places the victims at a disadvantaged position. Without the proper support, victims may find it difficult to navigate the procedural technicalities. Men, in comparison, have resources and are better equipped to handle the legal procedures. An abuser may use tactics in the court to prove that the complainant is a liar while portraying her negatively, depicting her as mentally unstable. These are not isolated cases; they occur almost every time a woman raises her voice in the court.

Moreover, the very act of getting orders is a tedious, time-consuming, frightening, and daunting experience, and retaliatory litigation enhances the burden of the complainant. Further, no mechanism exists to support the battered women. The pressure of being forced to run around the courts prevents many to raise their voice. Cases are being prolonged for various reasons, taking a toll on women. Many get frustrated and tired. Mired with the resource crunch, women find it hard to continue their legal battle. With little or no support from the natal family, or from the institutions such as the police and legal aid authorities, many surrender their rights without negotiations. With kids to manage, and while in the phase of recovery from

years of prolonged violence, many face difficulties. Women end up paying a huge cost for escaping the violent situation.

Ironically, the legal system that is bound to protect the victims became another tool that causes financial and emotional devastation for the complainants. For instance, in *Anupriya Pal v State of UP* (2018), the husband accused his wife of cheating, stating that to take 'revenge', the wife has filed a case of maintenance against him. The apex court observed that the wife has filed several complaints of harassment and dowry demands and after she filed a case for claiming maintenance, the husband, as a counterblast, filed a case of cheating and therefore quashed the proceedings against the wife.

Custody suits, maintenance, and a father's responsibilities

In the custody suits, the batterers file an application to emotionally harass the victim and may apply for a visitation right forcing her to return multiple times to prolong the contact. The opportunity for visitation rights is being used to coercively control wives. Such contacts help batterers gain advantages to mentally and emotionally torture the victim. Frequently, the batterers use the custody suit as a threat to abuse, control, and intimidate the victim. Kidnapping children from the custody of the victim is another tactic that is being used by the batterers. Intimidating the victim to concede into joint custody during mediation is one of the common methods used by the batterers besides their refusal to pay maintenance for the child to perpetuate abuse against the victims. The abusers who earlier have never showered love for their children use visitation as a technique to prey on their victims through the family courts, terrorize their wives in the courts, and use social media to harass their victims.

The policy of 'best interest of the child' does not take these factors into account and ignores the batterer's attempt to use children as pawns in the custody battles. Forcing contact with abusive fathers may terrify the children and does not end up in protecting the interest of the child. Mothers are being forced to compromise for the 'sake of children' and are compelled to join the company of violent men, ignoring the fact that unless violence is stopped, children are not going to remain safe. The courts while adjudicating the parenting matters hardly rely on expertise or knowledge. Judging parenting is a tough task, yet the courts as the self-appointed specialists become an adjudicator of how children should be brought up.

It is recently that the courts have addressed this '*Dickensian nightmare*' children face in custody proceedings in consonance with the rights as provided under international treaties such as the Convention on the Rights of the Child, 1989; Universal Declaration of Human Rights, 1948; and International Covenant on Civil and Political Rights, 1966. (Paul, 2020) The decisions pronounced in *Smriti Madan Kansagra v Perry Kansagra* (2020) and in *Ritika Sharan v Sujoy Ghosh* (2020) in consonance with the provisions

mentioned in Section 17 (3) of the Guardian and Wards Act of 1890, which provides that ‘if a minor is old enough to form an intelligent preference, the court may consider that preference’. It gave children the voice and platform to verbalize their wishes. A lot of research on the issue is required to examine how the law operates in the patriarchal society to protect the rights of battered women.

Way forward

Impunity in men’s conduct in conjugality underwrites the course of (in)justice for married women. And we have been silent witnesses. There is no public censure, no sense of collective outrage that this is even possible, no dent in public standing of persons who dehumanize women in their families in multitudinous ways in full public view.

(Kannabiran, 2019)

Irony lies in the fact that violent men abuse women with impunity and when women complain, the courts pronounce that women are abusing the law. The courts, hence, create a culture of violence and discourage the complainants to file the cases instead of deterring the crime. SLAPP cases have been existing in India for years informally though these are not being recognized by the law. More specifically, in cases pertaining to women’s complaints, men use frivolous lawsuits intentionally and knowingly to threaten and intimidate the complainants to create a fear and punish the women as they dare to raise their voice against men. Courts, therefore, become tools in the hand of powerful and resourceful men who deploy various strategies to silence the women. The courts in India need to recognize the abuse of the frivolous litigation process by men in which the abusers use the SLAPP suits as a tool to control women even when they physically escape their abusers’ violent clutches. Anti-SLAPP legislation is required in general, and specifically in cases of domestic violence, there is a need to ensure that complainants are not harassed by the batterers while using the family court as a further site of violence.

Notes

- 1 Gita Press, Gorakhpur, Uttar Pradesh is the largest publisher of Hindu religious text. It promotes the principles of Sanatan Dharma.
- 2 Author Swami Ramsukh Das in the 37th edition. It is claimed that this book sold more than one million copies. Copies are being sold at railway stations and public places.
- 3 Founded by Laxmi Bai Kelkar in 1936, it claimed that it has more than 5,000 active Shakhas and an estimated membership of around a million women.

MARRIAGE, MONEY, AND THE LAW

The corrosion of women's human rights is a litmus test for the human rights standards of the whole society.

(UN General Assembly, 2018)

This chapter examines the economics of marriage expenses or the costs incurred in celebrating a wedding and arranging dowry while connecting it to the matrimonial property division at the time of separation or the divorce of the parties. It argues that despite the law prohibiting dowry, it could not be eradicated. Instead, the dowry had taken a virulent form, and at the time of marriage, huge expenses are incurred for lavish wedding celebrations. Frequently, the expenses are made by the bride's family knowing that money is no guarantee for the safety of their daughter in her husband's home. Instead of regulating dowry, the state is legitimizing the same through its various schemes. Also, newer forms of economic violence are being inflicted on women. At the time of divorce or separation, a woman is entitled to receive the maintenance and her *stridhan* according to the law. None of the personal laws provide for equal division of matrimonial property even after a woman has spent years in marriage. The wages of the emotional or the physical labor of women remain invisible and unrecognized by the law. The maintenance granted by the courts is first not sufficient and, more importantly, remains unpaid on one pretext or the other. In such a situation, the argument that women are 'gold diggers' is falsely propagated by men to escape their economic liabilities and to deny women their dues. The way the legal system works is that complainants remain at a disadvantageous position and they end up spending their scarce available resources on litigation. Instead of ensuring restorative or compensatory justice, the law acts to reiterate patriarchal norms.

Dowry could not be eradicated despite being banned by the law

Rajni was strangled within 11 months of her marriage with Jitender. She was pregnant at the time of her death. She was subjected to continuous

torture for money. The court found contradictions in the testimonies of the witnesses and released all of them (*State v Jitender Garg*, 2008).

Geeta after her marriage to Mahadev died within five months of marriage. Her father has spent Rs 5 lakhs on the marriage. He used his savings and took loans but could not afford to give a car to his daughter on her wedding. Geeta used to complain about the beating she had received at her matrimonial home for the demand of the car. The court could not find a connection between the demand of the car with her death and therefore let off the accused persons (*State v Mahadev*, Delhi HC, 2015).

Eighteen-year-old Amreen was burned to death within eight months of her Nikah with Sameer. She succumbed to 85 percent burn as she was set on fire by her husband and his family. Amreen's father has died. At the time of the marriage, no demands were made. However, soon after marriage, pressure was created by the in-laws who used to taunt her for not getting sufficient dowry. They demanded Rs 2.5 lakh cash, refrigerator, washing machine, cooler, TV, and other items. When demands could not be met, the in-laws poured kerosene on her. She cried for help, but they ran away. It was the neighbors and tenants who put the fire by pouring water. Her mother and her brother got her admitted to the hospital. She died (*Firoza v State*, 2019).

Seema got married to Arun Garg on 25 February 1996. At the time of marriage, household items, clothes, and gold were given along with cash—Rs 2 lakhs. After a few days, Seema complained that her in-laws were not satisfied with the dowry and harassed her for an additional Rs 40,000/-. On 26 March 1999, Seema informed her parents over the phone that her in-laws were planning to kill her. On 28 March 1999, her father was informed that his daughter was administered a poisonous substance and was admitted in a hospital. She died on 30 March 1999. Her post-mortem report detected a pesticide, aluminum phosphate, in the stomach and large intestine. The session judge acquitted all accused persons except her husband, who was sentenced to ten years' imprisonment and a fine of Rs 2,000/. On appeal, the High Court increased the fine to Rs 2 lakhs. On further appeal, the SC confirmed the sentence of ten years' imprisonment but set aside the direction to pay the fine (*Arun Garg v State of Punjab*, 2004).

Minta Devi was set on fire on the night of 6/7 March 1991 by her husband and in-laws, who forcibly poured kerosene oil on her body and lighted it. Her entire body was burnt. The reason was that the girl was ugly looking and that the demand for dowry of Rs 10,000/ and a gold ring could not be fulfilled. The trial court convicted all accused persons and sentenced them to life imprisonment. On appeal, the High Court acquitted all others except her husband who further appealed to the SC. The apex court acquitted him of all the charges (*Arvind Singh v State of Bihar*, 2001). Minta Devi was burned alive for Rs 10,000/- and a gold ring, but no one was found guilty.

The Dowry Prohibition Act enacted in 1961 prohibits both giving and taking of the dowry. Dowry demands made at the time of marriage are penalized. Also, Section 304B IPC criminalized dowry-related violence, yet the law could neither prevent the practice of extortion in marriage nor could stop the brutal torture or the murders of women. Rather, in the commercialized world, besides dowry, huge expenses are being incurred in the celebration of lavish weddings. This increases the economic burden for the brides' families. Nevertheless, the high expenses incurred on the marriage celebration or for the dowry neither ensure the safety of the bride nor guarantee the stability of marriage.

Numerous reported and non-reported cases repeat similar stories in which the women have been tortured and murdered for dowry. These coercive dowry demands are made at the time of marriage, after, or before the marriage. The accused persons have deployed the technicalities of law to argue their case, or the investigation is botched up by the police, but the fact remains that women are being brutally abused and burned alive. Laws exist but the sensitivity or awareness to the issue of women's deaths is missing. Perhaps, lives of women are cheaper.

It is ironic that despite brides being haunted and tortured for not catering to the whims and fancies of the grooms' families, it is the women who are being labeled as 'gold diggers' when they complaint about such abuses. The legal system penalizes women for raising their voice against the violence. The grooms and their families are not penalized for their gross criminal actions.

For women, marriage is not a profitable venture

'Indian Matchmaking' and the ways the concept of arranged marriages work has always remained a controversial issue (Roychowdhury, 2020). It is a well-known tradition continuing for ages and is a curious mix of customs, practices, and laws. Besides economic status, caste and education of the parties emerged as significant social factors that guide the process of arranging matches (Banerjee et al., 2009). Arranged marriage is deemed as a social responsibility rather than a private affair between the two individuals and is a deeply rooted socioeconomic practice.

Patrilocal marriage, in which a woman shifts territorially from her parents' home to her matrimonial home is based on the concept of economic and material dependence of women on men. A woman is alienated and dispossessed from her parents' house and could not acquire any economic rights in her marital home. Financial transactions at the time of marriage devalue women. The social and cultural construction in which a woman is perceived as a liability despite her enormous visible or invisible contribution in a household has led to extreme inequality between the parties to marriage. A woman's worth, earning capacity, skills, abilities, contributions—economic or

noneconomic, paid or unpaid work—are not considered while denying her of her rights in her marital home. The power dynamics in the marriage operates to subjugate a woman (Kishor and Gupta, 2009). Women's strategies of pursuing power and security in their husband's families lead them to 'bargain with patriarchy' and reconstitutes gender inequality (Derne, 1994). A woman therefore remains at a disadvantageous position in marriage.

Commercialization of marriage is intensifying patriarchy

Any relationship is based on mutual respect and trust. However, a marriage relationship in India is delicately poised between the complex realm of market, religion, and law; therefore, the basic foundation of the relationship itself is unstable and weak. The marriage *bazaar* is working impeccably to promote the conservative ideology. Today, men and women approach the marriage *bazaar* through thousands of match-making, matrimonial, and Internet sites (Sinha, 2015). Kumari (2004) noted,

The traditional pattern was marked by the prominence of arranged marriages which were primarily oriented towards creating alliances between two families through 'classical matchmakers' such as family priests and relatives. In such a marriage there was a minor role for the bride and bridegroom in the context of decision-making regarding the marriage. Contemporary marriages, however, is based more on an understanding between about-to-be-married man and woman along with the intention to the views of family elders. New 'mediators' such as the media (matrimonial columns) and marriage bureaus have also emerged, contributing to the rise of nationwide, and sometime transnational, system of information and choice-making in the context of marriage.

(91–92)

Matrimonial agencies demand huge charges for arranging a match (The Hindustan Times, 2019b). The market for online matrimony business is 1,500 crores with compound annual growth rate of 65 percent (The Economic Times, 2013). Though the online matrimony profile is skewed toward 18–35-year-old working-class male users, the market is growing with 95 percent revenue in matching alliances and dating services targeting 30 percent of the population between the 15 and 30 age group eligible for marriage in the next five years (KPMG and Google, 2016).

Capitalist-Brahmanical-patriarchy provides an ideological framework for such market-driven marriage relationships. The language of the market operates to describe the qualities of brides and grooms to seek a perfect match that is designed to fit in the concept of purity of blood line while maintaining the caste hierarchy. Also, the exchange value of an individual

is highlighted depending on his or her socioeconomic background while maintaining and reiterating the hierarchical relationship between the bride and the groom sides.

The big fat Indian lavish wedding: Expanding the marriage market

Marriage in the neoliberal globalized economy has become the indecent display of the culture of conspicuous consumption (Nigam, 2001). The ‘big fat lavish Indian wedding’ has huge market potential. It holds aspirational value for the middle class as it is inspired by Bollywood and the corporate rich lifestyle that celebrates social conservatism. Gender discrimination has taken a new turn as women are being treated as a commodity in the marriage market. Ostentatious celebrations entail upholding orthodox values and these are also about competition and assertion of power (Bhandari, 2017). The market has converted an ordinary custom to a stylish, glamorous, pretentious, and a superficial ritual.

Huge expenses are being incurred on wedding celebrations, which is taking a toll on many families (Das UR, 2016). It is estimated that a wedding costs between 5 lakhs to 5 crores in today’s scenario with a person spending almost one-fifth of the accumulated wealth in a lifetime on the occasion. As per approximations, a lavish wedding may include generous spending on arranging the feast, music, choreography, designers, logistic planning for moving guests and may also include the services offered by wedding planners where planning may take months for a picture-perfect wedding (Salvi, 2019). The wedding industry involves coordinating a range of services such as catering, decorations, invitations, photographers, planning theme, or the destination weddings, arranging carnivals, bridal cosmetic, gold and gifts sellers, designer dresses, honeymoon planners, and using drones for photography, among other range of glamorous services depending on the socioeconomic status of the parties (Bundhun, 2016). Multiple ceremonies are organized for several days before the final wedding day, which involve extravagant spending (Jain, 2015). A large part of expenses is allocated to giving expensive gifts and cash to the relatives, friends, and other guests.

In fact, the marriage market is considered a booming, flourishing recession-proof business. Estimates put the wedding industry as a \$50 billion market growing at 25–30 percent annually (Pandit, 2017). During the pre-COVID period, it is estimated that the marriage industry was worth 100,000 crores. It adds over 3 lacs jobs a year during the season. Special malls are created to cater to the needs of those who can afford luxuries for a wedding (Saini, 2017). Conspicuous consumption is the sole aim of this form of commercialization in which pleasure, morality, imagination, and emotions are exploited by the market forces. The lockdown and restrictions

imposed due to COVID-19 may have shrunk the big fat wedding in size for some time, but it has not lost its sheen (Dash, 2020).

Though it is a risky business for the parents of brides with no guarantee that the marriage will survive, in many cases, families take loans to spend a fortune on arranging for a lavish wedding, knowing that this cost may not be shared by the groom or his family and that it could not be recovered in any manner later in case the marriage breaks down. Perhaps, huge spending is the result of societal pressure and the aim to preserve the social status (Bhattacharya, 2016). Also, it is considered a social and a moral obligation of the bride's family to host the wedding and to organize a lavish feast for the groom's family as well as for relatives, friends, and acquaintances from both sides. Scholars have noted that the parents of brides sell their productive assets, including land, to afford the wedding celebrations and dowry payments (Gupta, 2002; Kodoth, 2005).

A household survey by India's Citizen Environment and Consumer Economy, conducted between April 2015 to March 2016, covering 61,000 households shows that more than a quarter of the households are indebted and majority of them borrowed huge amounts of money from informal sources rather than the banks or other financial institutions. Nearly a third reported taking loans to meet the obligations for arranging the wedding feasts. The proportion of such households is higher at the bottom of the pyramid than at the top. According to a survey conducted by IndiaLends—a digital platform, around 20 percent of loan applications from young Indians in the age group of 20 to 30 years in the year 2018–19 is for the purpose of marriage, 19 percent sought loans for travel, and 11 percent took loans to start their own business (The Economic Times, 2019).

In 2017, an effort has been made to introduce a bill in the Lok Sabha titled 'The Marriages (Compulsory Registration and Prevention of Wasteful Expenditure) Bill, 2016' by MP Ranjeet Ranjan to put a limit on the number of guests to be invited and dishes to be served in weddings to check the 'show of wealth'. It also stated that those who wish to spend above Rs 5 lakhs may contribute to the marriage of poor girls (The Hindustan Times, 2017). The purpose was to prohibit extravagant and wasteful expenditure on marriages and to enforce simpler solemnization, besides curbing social pressure on poor families to spend more on 'pomp and show' in wedding celebrations. However, the bill remained on paper as the hegemony of Parliamentarians, mostly upper caste Hindu males, did not allow the egalitarian ideas to thrive.

The escalating dowry market

The marriage market treats men and women as commodities to be bought and sold in the market. Several reports have observed that in such markets, the rates for dowry are fixed depending on indicators such as the socioeconomic

status of the groom, his caste, salary, occupation, and his earning potential. Educated grooms command a higher dowry from the bride's family. In fact, the CSWI Committee in its report in 1974–75 observed that,

There are more or less defined grades of dowry for men in different professions. For example, men in the IAS and IFS in Orissa, Bihar, Uttar Pradesh and Punjab, belonging to well-to-do communities, can easily expect to get in cash and kind, at least a lakh of rupees. Business executive ranks next. Engineers and doctors stand lower than the business executives. This class seems to expect that marriage would bring them not only a partner, but also all the things needed to set up a modern household, such as car, refrigerator, radiogram. These groups serve as pace setters and naturally influence those below. Thus, a peon or a clerk would demand such things as a bicycle, a transistor, and a wrist watch. A scooter is a common item of gift to the son-in-law in the groups at the middle level. In villages too, there are similar demands.

(p. 73)

Decades later, the situation has not changed. Currently, a groom from a higher caste with an MBA degree can command a dowry of Rs 6 to 60 lakhs, whereas an IAS officer may ask for 50 lakhs and rates go up in case the groom is settled abroad (Mishra, 2011). In fact, the rates of dowry are increasing over the years and now it runs into crores (Vasudev, 2012). The highest bidder can fetch a seemingly well-qualified groom. These services are digitalized now where the websites are created to calculate the dowry amount depending on the age, caste, education, profession, monthly salary, geographical location, height of the groom, number of times he has married earlier, and his father's profession, besides other factors. One of such websites this author came across is www.dowrycalculator.com.

Dowry prices are bargained; the negotiation for dowry is a norm. An educated, 'good looking' professional or a well-earning bride can 'expect a discount but not a waiver in the dowry market' (Chunduri, 2005). For brides, the qualities that are sought include her perfection in terms of her looks, fairness, abilities to perform household work, her earning potential, wealth and status of her parents, and the number of unmarried daughters in family, besides factors such as her caste or character. In fact, many men look for brides who earn handsomely, yet they also demand dowry and yearn that the bride should be adorned with 'homely' qualities. An analysis of matrimonial advertisements in any newspaper or a matrimonial site reflects that men prefer brides who can fetch resources yet could be easily controlled.

In the commodified world, marriages are organized not on the basis of social or emotional compatibility between the parties but on the basis of volume of transfers and the parameters of socioeconomic status of the parties.

Commercialization has changed the way in which payment around marriages are organized where elements of care or affection are being replaced with greed and insatiability. Furthermore, dowry is used by men to increase their material wealth and to enhance their living standards. Satisfying the lust to acquire wealth quickly to upgrade economic status through receiving large transfers in the form of dowry is the easiest available option, and if this does not happen, men subject their wives to violence. These demands are not limited to a one-time transaction but may continue after the marriage, when the groom or his family can make demands on any festival, occasion, or otherwise. Currently, dowry has become a compulsory coercive universal practice that has spread its tentacles across the boundaries of class, caste, or religion (Bradley et al., 2009).

Some scholars claim that steadiness of conjugality is assumingly determined by the material wealth that accompanies the bride, though experiences show otherwise (Menski, 1998). Seemingly, dowry enables a woman to secure a 'place' in her husband's home, though ultimately it may lead to violence. Also, in her natal home, a woman is viewed as an economic liability and dowry as a practice reinforces this belief. The media celebrates dowry and glorifies the higher status being accredited to the groom's family. The state hardly intervenes during negotiations or transactions. It is only at a later stage that regulations come into play (Khan and Gowhar, 2014). Also, when the law intervenes, it completely ignores the impact of socioeconomic transformations of the social relations. Perhaps, the law has failed to keep pace with the changing economic realities.

Dowry and wedding celebration are resynthesized in the market economy

Historically, payments between families at the time of marriage existed in many societies across the world and are determined by economic conditions, social structure, and family characteristics (Anderson, 2007). These are seen as a way of distribution of wealth arranged by the parents of respective spouses as dowry or bride price. In India, the practice of dowry has evolved over the years. Prior to dowry, bride price and marriage by exchange was an integral part of society among the hypergamous castes. Many castes in in lower rungs of hierarchy and some of the middle rungs also practiced bride price (CSWI, 1974, p. 69). It is a customary practice in which wealth is transferred to the bride's family by the groom. The notion of compensation of loss of productive work is implicit in the concept of bride price as it lends a status to a daughter in her natal family where she is not regarded as a burden and has a bargaining power in her husband's home, though this idea is flawed as it involves buying a wife. The practice of bride price has been observed among the Uraon of Chohatanagpur, the Ho and the Munda concentrates in Arunachal Pradesh and Karnataka, Lambdas in Andhra

Pradesh, Bhumias in Orissa, and many other tribes. Srinivas (1984) in his seminal work while relating the caste to dowry explained that

the richer and the higher strata of hypergamous caste paid huge sums by the way of dowry to obtain desirable grooms, the poorer members the lower strata were often required to pay the bride price, or to have recourse to marriage by exchange, either direct or indirect. Direct exchange was when two men marry each other's sisters, and indirect, when other parties were also involved to complete the exchange.

(pp. 6–7)

Dowry, therefore, has a strong linkage to the rich upper caste communities in the North, whereas the bride price and marriage by exchange has been observed among various groups in the South of India. The CSWI report noted that in the South, the common pattern of marriage involves close kin or direct exchange and therefore, 'systematic differences in status of givers and takers do not emerge' (p. 64).

However, over the years, with the changing economy, dowry has become more as a symbol of socioeconomic status and replaced the custom of bride price because of the influence of Sanskritic values, economic prosperity, and the influence of high prestige groups (Kapadia, 1993; Caldwell et al., 1983). The monetization of dowry took place with the advent of the organized sector and increase in agriculture activities. Srinivas (1984) argued that the pre-British dowry period needs to be distinguished from the modern dowry and noted,

The attempt to equate the huge sums of cash, jewellery, clothing furniture and gadgetry, demanded of bride's kin by the groom's, to *dakshina* is only an attempt to legitimize a modern monstrosity by linking it up with an ancient and respected custom, a common enough and hoary Indian device. What is surprising is that the imposture has had so much success.

(p. 6)

Though *dakshina* to groom by the bride's father or the *kanyadaan* entails not only a transfer of wealth but also the commodification and objectification of women, this sociocultural practice is nevertheless glorified. Rooted in the ancient texts, this discriminatory practice creates a hierarchical relationship between the two families where ironically the 'giver' of his daughter as well as his wealth is forcibly placed at the lower pedestal. Yet dowry is justified as a social and a cultural practice. It is associated with the pretentious prestige of families that has exhibitory value. Today, dowry includes an element of coercive demand made by the groom and his family for cash

or kind that may be made before marriage, during the wedding ceremony, or after the marriage (Goody and Tambiah, 1973). It puts the bride's family under heavy pressure and hardships. Rather than being a symbolic gift, the dowry is perceived as a key determinant to the daughter's marital happiness and the quality of groom one can fetch.

Those who justify the practice of dowry erroneously view it as a daughter's share of parental property and see it as a 'security' to fall back upon in times of crisis (Kishwar, 1989; Oldenburg, 2002). It is wrongly held that dowry could lend financial protection to the women in her marital household. This view ignores that fact that a woman as a daughter or a daughter-in-law has no control over dowry transaction or management. It is negotiated between elderly men or may be the women in authority figure may play some role in decision making. As a daughter, a woman cannot demand or determine the amount of dowry. Also, the dowry that is given is not an equal share of the family property (Agarwal, 1994). Dowry, therefore, has no linkage to the female inheritance. Dowry rather denies a woman her share in parental property, more so if it is the immovable property (an arable land). Dowry impoverishes the parents of a daughter and has enhanced the perception that the daughters are an unwanted, economic burden. It is also linked with the rising son preference (Das Gupta et al., 2003). Elimination of daughters has been institutionalized, starkly resulting in a higher number of cases of female feticide (Jha et al., 2006), infanticide, and the neglect of the girl child (Chakravarty, 2010). Also, brides in their matrimonial homes have no control over dowry. After the marriage, the assets brides own are controlled and appropriated by their husbands or mothers-in-law (Anderson and Bidner, 2015). The fine line between *stridhan* or gifts being given by parents to their daughter and coercive demand made by the groom's family is completely blurred.

A survey by AIDWA (2003) established that over a period, the practice of dowry has risen and spread among every caste and community and became a pan-India phenomenon. Education or enhanced economic status has not helped in curbing the practice. Rather, the vulgar display of the commercialization is increasing. Dowry has become a tool for extortion. Market reforms has fueled the fire, and the violence on women increased in intensity and severity despite their increased contribution to the wealth of the matrimonial family. The problem of dowry was aggravated due to the deeply entrenched gender unequal social and cultural norms. Sandanshiv and Mathew (1995) noted

The most crucial element of a dowry death case is a woman's inability to effectively resist her in-laws' demands, and if necessary, leave a marriage which cause humiliation. In Indian society, there is a culture of silence that reinforces an oppressive pressure to keep the marriage going at all costs. This effectively keeps women at abusive

homes. Hence, dowry and increasing demands related to it, are not the sole exterminators of women in this country. Instead, it is the unjust social pressure on women to stay in abusive, unwelcome homes when their lives are clearly in danger.

(pp. 79–93)

However, the law and policy makers seemingly are unaware of these social realities. It is assumed that by merely enacting the laws, the problems will disappear. However, this is not happening. More laws are not guaranteeing peace, safety, or happiness; rather, the laws remain underused and not utilized effectively to eradicate the problem.

Not gold medals but jewelry for girls

The traditional mode of giving gold to women as *stridhan* in lieu of bank balance or property is a benchmark for economic rights of women in the modern India. For instance, in Kerala, the practice is to gift a minimum of 100 sovereign of gold (equal to 800 gram) jewelry to the bridegroom (Krishnan, 2020). Kerala accounts for nearly a fifth of the 800 tons of gold sale in the country every year. In the first quarter of 2017, according to the World Gold Council report, India's purchase of gold counted over one-fifth of the world demand for gold. India is the second-biggest consumer of gold after China, buying almost 800 to 1,000 tons of luminous shining metal, out of which 50 to 60 percent is for the purpose of marriage (McKenzie, 2015).

When children worldwide are being nurtured with dreams and aspirations to earn gold medals and accolades in every field, be it sports, studies, arts, creativity, innovations, ideas, and thinking, parents in India start saving for their daughter's marriage since the birth of the girl child (Browning and Subramaniam, 1995; World Gold Council, 2002). Marriage is perhaps seen as an ultimate destiny for a woman and is prioritized over her career, abilities, aspirations, and dreams. Collecting and preserving gold or expensive items for dowry is preferred over investing the money on education, career, or making her self-dependent. Research has shown a link between the rising gold price that enhances the cost of dowry with the low spending on girls leading to their neglect and even abortion of the girl child (Bhalotra et al., 2018, 2020).

Law does not deal with the coercive demands

The state is not regulating the coercive transfer of wealth from the bride's family to the groom's family. Rather the state, the market, and the society reiterate and promote the coercion indirectly in the garb of customs or practices. Several studies show that women are tortured and murdered for coercive exorbitant demands being made for cash or kind made by the

groom and his family. Items, including cars, flats, land, and other luxuries, may also be demanded and arranged (Das, 2016). Another study of 1,330 allegations made in the FIRs between January to June 2017 by brides and their families reveals how the dowry *bazaar* is working openly despite the fact that it is legally banned (Lama and Sharma, 2017). Cash is the common demand and 57 percent of complainants specified giving cash as dowry. In most cases, the cash demand ranged from 2.5 to 5 lakhs rupees and in nine cases, the demands were made for more than a crore of rupees. Car was sought in majority of cases besides flats and furniture, jewelry, and other expensive items. According to this study, a large number of complainants said that the harassment for the inadequate dowry began as early as the initial phase of marriage. Women complained of being assaulted during the honeymoon. The study reported that in 50 cases, women claimed that they were forced into unnatural sex and five complainants said that they accepted the torture because their husband allegedly shot their porn video. The state probably has shut its eyes while giving in to the reins of the free market; thus in a way, it is legitimizing dowry subtly as well as directly.

State is legitimizing dowry

Dowry violence is not seen as a ‘law and order’ issue by the state. Rather, the state promoted dowry and exploitation of girls in the guise of several schemes such as *Sumangali* in Tamil Nadu (Iyengar, 2008), *Arundhati* in Assam (Singh, 2019), *Laadli* in Goa, or *Rupashree* in West Bengal (Bhattacharya, 2018). In the guise of helping women and their families, these schemes are reproducing the patriarchy in its worst form.

For instance, the state government in Goa launched two schemes—one is the *Laadli* scheme in 2012 that provides Rs one lakh to every girl child for her wedding ceremony, and second is the *Kanyadaan* that gives Rs 25,000/ at the time of marriage to those having an annual income of less than Rs one lakh (Pinto, 2018). Similarly, the West Bengal government initiated the scheme *Rupashree Prakalpa* on 1 April 2018 to provide a one-time grant of Rs 25000/ for economically stressed families at the time of the marriage of the adult daughter. The purpose is to mitigate the difficulties poor families face in bearing the expenditure of their daughter’s marriage for which they often have to borrow money at a high interest rate.

The *Sumangali* scheme started in Tamil Nadu in 1989. It is also known as a ‘marriage assistance scheme’, one of the examples of the exploitation of women that promises young girls a lump-sum payment for marriage. Young women are lured into the scheme to ‘earn dowry’ by working in textile mills, where they are made to overwork and be underpaid, intimidated, and sexually abused (Jesudasan and Preetha, 2017). The mills women are employed but do not follow labor laws relating to working hours, minimum wages, or social security. Moral policing, surveillance, gender segregation, and lack of

mobility are some of the other harms the girls face. Most of the girls, aged 13 to 18 years, are from poor, illiterate, and low caste families. A few committed suicides. The High Court of Madras has asked to abolish the scheme. Once *Sumangali* was closed due to pressure by the civil society, it emerged again with new names such as *Kanmani*, *Ponmagal*, *Mamgalyam*, and others to trap the girls into exploitation (Parthasarathy, 2017). The India Committee of the Netherlands conducted a research in 2016 and in its report, it alleged that one-third of spinning mills in Tamil Nadu employ 91 percent of forced labor through the *Sumangali* scheme where workers' rights are brutally violated. Women workers younger than 18 are compelled to face the worst forms of abuse. Besides enforcing violation of rights at many levels, the scheme also reinforces the belief that a woman is happy once she is married and perpetuates the practice that girls' families give huge dowries at the time of marriage.

In short, all such schemes glorify the practice of dowry, promote harmful traditions of venerating the costly wedding celebrations, and see marriage as a burden. Despite the known fact that dowry perpetuates a vicious cycle of demands and abuse of women, the state took no action to prevent it but reinforced the dowry by making a one-time payment. Rather than addressing the structural issues relating to inequalities in marriage, eradicating dowry, eliminating violence, or empowering the girls through education and skill building, these schemes reiterated patriarchal norms. The launch of such schemes suggests that the state neither has intentions to eliminate the practice of dowry nor has a will to deter dowry abuse.

Newer forms of economic violence are being inflicted

Women in India are facing the harsh burden of increasing inequalities while marketization has refueled the old forms of violence, intensifying gender hierarchies within families. Women are being denied paid employment or property ownership in the first place. However, the changing economic scenario with women participating in paid employment has introduced a different set of tensions and struggles within a household. Atkinson et al. (2005) argued that because female employment threatens men's authority in the relationship dynamics and challenges the image of the male breadwinner, women are abused. Globalization has unleashed the new ways for repression in which women are essentially seen not only as a factor for producing or rearing children or managing the household work within families, but they also are exploited as they enter the wage market, as marketization has reduced them to a commodity.

In the commercialized world, women are facing denials and deprivations in different forms. First of all, many are not allowed to take up educational opportunities or jobs to fulfill their career aspirations after marriage. World Bank estimated that female labor force participation dropped

by 19.6 million from 2004–05 to 2011–12, mostly in rural areas in the age group of 15–24 years due to factors such as denial of educational attainment, socioeconomic status, and household composition (Andres et al., 2017).

Those women in jobs are being compelled to face *multiple victimization*, where incomes of women are being controlled by men, and women are forced to work vigorously for longer times at home and at the workplace, while the hostility at both the places continues to grow. Bhattacharya (2015) while analyzing the NHFS-3 data observed that married women who are financially self-reliant experienced violence. They are more likely to be employed year-round and also are more likely to work for cash remuneration yet have less say in the vital decision on how to spend their earnings, and thus are susceptible to financial exploitation. Luke and Munshi (2011) observed that when women in the tea plantations in South India earn a higher share of the household income, the probability of marital violence increases. Paul (2016) explained that the emotional cost may become higher for men when household decision-making power diverges from traditional gender norms, and, therefore, men may turn violent to assert their dominance. Men gamble and consume money in alcohol, and women are being made to suffer resulting in increasing violence (Anderson and Genicot, 2012). The state and capitalist forces want more women to be drawn into the labor force, but at the same time, they do not want women to acquire autonomy, mobility, or greater control on their lives because family provides them an alternative where women provide unpaid care and perform work without demanding wages (Molyneux, 2006). What benefits the state and society is a docile, disciplined worker who cannot revolt. The state, therefore, has not shown its interest in challenging the systematic denial of women's autonomy or freedom from domestic violence (Batliwala, 2007).

Moreover, men as abusive husbands controlled the financial resources, women's assets, and life decisions besides restricting their mobility. Many men refuse to contribute to household expenditures and expect women to use her entire salary to fulfill the needs of their kids. In a majority of cases, the bank accounts of women are controlled by abusers who take money from women's purses and banks, leaving them with no resources to meet their own needs or their children's needs. Even for her personal expenses, a woman has to beg her husband. Women's earnings, their spending, and savings are all controlled by men.

In situations in which women are being thrown out of the house, they barely have anything left with them. Many women are kept unaware of information regarding family finances. Men are secretive with their money. The majority of women have no idea as to what their husbands earn. At the time of the breakdown of marriage, the assets men own such as flats, houses, cars, and all other items are being either sold or are transferred in

the name of the relatives of the husband. The goal is to devoid women of their economic assets.

In the age of digitalization, new forms of controls are being imposed upon women. In several cases, men take their credit or debit cards either coercively, fraudulently, or through deception. In Western countries, the research shows that women's bank accounts are being controlled by men and even the passwords for emails are being acquired by men who spy on the women's digital activities (Branigan, 2004; Sharp-Jeffs, 2015; Usta et al., 2013). This is a new form of exploitation that is different from the traditional forms of abuse (Littwin, 2012). Taking a loan on the names of women or giving their name as surety, monitoring their mobiles and social media activities, and forcefully using their hard-earned money to make purchases when women are forced to repay the loans are different forms of violence that are affecting women's lives in the neoliberal economy. Research in developed countries has shown numerous ways in which abusers have inflicted financial violence. However, in India, more research needs to be done.

After separation too, men sabotage women's jobs. As husbands, men coercively control their wives by visiting their place of employment, calling their colleagues, and contacting their manager to ensure that they should not be able to work peacefully. Despite maintenance orders, men refuse to pay any money. Kids are being made to suffer in the process as men refused to pay for their education. Withholding child support after separation is evident in most of the cases.

Recovery of *stridhan* is not an easy process

The law provides that on separation, a woman can recover her *stridhan*. However, registering a case or the recovery of *stridhan* requires submission of evidence. For instance, the bride who claims that she got a certain worth of gold as dowry is expected to show the purchasing bills and documents and has to file other evidentiary claims. In many instances, the parents of the bride collect ornaments and gifts for years and therefore for some items, the evidence possibly cannot be produced. Also, after the marriage, the valuable gifts, jewelry, and other items are taken into custody by the husband and the in-laws on one pretext or the other. Women often have to ask for jewelry from the husband or the mother-in-law in case she has to wear these. Therefore, when filing a case under Section 406 IPC, women are in no position to recover their *stridhan* easily. Often, in the name of *stridhan*, only the old worthless items are returned. Also, if the marriage is sustained for several years, producing evidence becomes difficult. Recovery of valuables is a tough task. In cases in which *stridhan* was recovered, it is in no way adequate to sustain women and their children. The courts also do not help women; for instance, in *Praveen Kumar v State* (1998), it was held that mere

failure to return property did not constitute the offense of a criminal breach of trust.

Is alimony adequate to sustain life?

The law provides that a woman can claim maintenance. However, abusive men do not pay maintenance easily. The batterers, if in private jobs or business or are self-employed, deploy all possible tactics to hide their real incomes. The courts frequently turn a blind eye to such manipulative calculative strategies adopted by batterers. Also, alimony payments and settlements are frequently made under conditions of compliance to social norms of being a 'good' wife (Mukhopadhaya, 1988). In fact, in several cases, the courts have overturned the women's rights to claim maintenance. In *Sanjay Bhardwaj v State* (NCT of Delhi), the Delhi HC held that

We are living in an era of equality of sexes. . . . An unemployed husband, who is holding an MBA degree, cannot be treated differently to an unemployed wife, who is also holding an MBA degree. Since both are on equal footing one cannot be asked to maintain other unless one is employed and other is not employed.

(para 5).

The court has deployed the argument of formal equality in this matter without examining the reasons why the law on maintenance has been formulated; it held that both men and women are on equal footing. Even though a wife may have the qualifications on par with the husband, the job market does not treat men and women equally. Further, women are expected to give up their career upon marriage, and many sacrifice their career. Finding a job in a competitive market years after working as a homemaker may be difficult.

Similarly, in *Bhushan K Meen v Mansi Meen* (2010), it has been observed that regarding the qualifications of a wife, there is no reason why she is not in a position to maintain herself. The amount of interim maintenance granted by the trial court is reduced thereof. In *Mamta Jaiswal v Rajesh Jaiswal II* (2000), the court stated

A lady who is fighting matrimonial petition filed for divorce, cannot be permitted to sit idle and to put her burden on the husband for demanding pendente lite alimony from him during pendency of such matrimonial petition. Section 24 is not meant for creating an army of such idle persons who would be sitting idle waiting for a 'dole' to be awarded by her husband who has got a grievance against her and who has gone to the Court for seeking a relief against her.

The majority of women are toiling hard in homes, without being paid or being acknowledged for their contribution. However, the courts seemingly are unaware of these socioeconomic realities. A woman is thrown out of the matrimonial house once she files a complaint, and therefore to survive and stay, she is being compelled to find an alternate option. Not all women avail of the right to reside as provided under the PWDVA for various reasons. Conceptually, the law does not provide for a comprehensive package for a battered woman.

It is in *Rajnish v Neha* (2020) that the Supreme Court laid down the guideline requiring both parties to submit the detailed affidavits to decide the quantum of maintenance under the different personal laws as well as under Section 125 CrPC and ordered that for the enforcement and the execution of orders as a money decree of the civil court according to the provisions of the Civil Procedure Code. However, a lot needs to be done in order to acknowledge, accept, and protect the economic rights of women and children facing violence within homes.

Law does not recognize the unpaid invisible work of women

One of the far-reaching ramifications of industrialization is the separation of household and work space, thus creating a transformation of the household system. Creation of factories, industrial units, and trade centers away from home spatially separated the concepts of communities and markets, therefore leading to the public–private divide (Sen, 1997). This separation led to gender division of labor in which men have been construed as bread earners while the home became the site of reproduction and nurturing activities. The work done by women at homes remains unrecognized and unpaid, eventually to be covered by the family wage of men. Also, capitalism has led to ‘feminization of poverty’ and compelled women to take up low-paid jobs in the informal working conditions, but at same time, when they venture out to earn, they are subjected to violence both at home and at the workplace. Coercive control is being imposed within the private and public spheres.

Besides, women as wives and mothers spend most of the time taking care of the children and looking after houses, which is an exhaustive, dull, toiling, stressful, and tedious job, and yet this work remains unrecognized and invisible. Women cook; clean; do laundry; act as mediator, teacher, and counselor; babysit; get household supplies; gather firewood or fetch water walking for miles; care for the children, sick, and elderly; and do loads of other work, and therefore could not take up paid employment. Women do three times more unpaid work than men, which can keep them away from having careers. A report by McKinsey Global Institute (2015) suggests that 75 percent of unpaid work done by women if valued would be equivalent to \$10 trillion of output per year or 13 percent of global GDP. A recent Oxfam

report (2020) shows that women perform 12.5 billion hours of unpaid labor every day for poverty wages, while the world's richest 1 percent have more than twice as much wealth as 6.9 billion people. Gender inequality persists and at this rate, it may take 257 years for women to have the same economic opportunities as men.

Another report by UNDP (2015) suggests that domestic chores and responsibilities are major barriers to workforce participation. The International Labour Organization (ILO) (2018) adds that

globally, the principal reason given by women of working age for being outside the labor force is unpaid care work whereas for men it is being in education, sick or disabled. In 2018, 606 million women of working age have declared themselves to be unavailable for employment or not seeking a job due to unpaid care work, while over 41 million men are inactive for the same reason.

(p. xxxi)

In India, it is estimated that women are investing five hours or 351.9 minutes in a day as compared to men who are investing 51.8 minutes in unpaid work, whereas a total of 442.3 minutes per day is the time spent by men and 536.6 minutes per day is the total work done by women (OECD, 2018). India Spend (Chandrashekhar and Agarwal, 2017) reported that a survey of 3,177 mothers with children in age group 1–6 years in Rajasthan found that on average, the respondents spend 9.4 hours each day doing unpaid work as against 17 minutes doing some form of paid work. This unpaid work is never counted while calculating maintenance, *meher*, *stridhan*, or settlement at the time of divorce. The courts exclude these toiling of women in their matrimonial homes while deciding the monetary value at the time of separation or divorce.

Evolving jurisprudence regarding recognizing contribution of women

The general recommendation on Article 16 of the CEDAW (2013) noted that

the State parties should provide both spouses equal access to marital property and equal legal capacity to manage it. They should ensure that the right of women to own, acquire, manage, administer and enjoy separate or non-marital property is equal to that of men.

(para 38)

It further elaborated that the state parties must provide equal formal and de facto legal capacity to own and manage the property to achieve formal and

substantive equality with respect to property rights during the dissolution of marriage. Substantive equality could be achieved when the states examine the application of effects of laws and policies while accounting for women's disadvantage and exclusion. Duty is cast upon the state to provide information on economic consequences to individuals entering into a marriage relationship of its potential dissolution by divorce or death.

Countries worldwide have recognized the fact that women suffer the most when a marriage relationship breaks. Women's right to matrimonial property has long been recognized by the law in several Western countries, considering the fact that women equally contribute visibly or invisibly to create matrimonial assets. The law defines matrimonial assets or property to include assets that both husband and wife accumulate during the marriage because of their visible or non-visible contribution and provides for the equal division of matrimonial property between the spouses at the time of divorce or separation. In case the spouses were married without any provision concerning matrimonial property law, the default statutory system of a limited community property is applied (Carolyn and Perry, 2002). According to this provision, property acquired during the marriage is held in common, although gifts and inheritances acquired during the marriage are the separate property of each spouse.

The laws in the UK and the USA have recognized that women are at a disadvantageous position in a marital relation and therefore protect the right to matrimonial property of the wives. Under the provisions of the Matrimonial Proceedings and Property Act, 1970 of the UK, the courts could order to make financial provisions, could transfer the property, or could order regarding settlement to ensure that married women's right to property is protected. The Australian Family Law provides that the courts assess the nonfinancial contribution made by wives to the welfare of the family through unpaid work at home. In Ireland, a wife's domestic duties are recognized under the law. The community property ownership model is made applicable. Both spouses are joint and equal owners of the properties irrespective of the fact that title of the property belongs to one of them (Carolyn and Hanoch, 2004). The Canadian law governing division of matrimonial property stipulates that child care, house management, and providing finance is a joint responsibility that brings joint rights over property. Kenya has enacted Matrimonial Property Act in 2013 to provide for the rights of spouses in relation to matrimonial property.

In England, while recognizing the principle of equality in terms of division of property at the time of the dissolution of marriage, the court in *White v White* (2000) ensured that both the parties upon divorce receive their rightful share. Lord Nicholls stated that

there should be no bias in favour of the money-earner and against the home-maker and child-carer.

The House of Lords in *Miller v Miller* (2006) articulated that the rationale for redistribution of resources from one party to another may be based on three dimensions, which include need, compensation, and sharing for redistribution.

However, in India, there are no specific laws that recognize joint ownership or could acknowledge women's invaluable invisible contribution toward the family. The courts have made scattered attempts to quantify women's work within the household. For instance, it is noted that

For compensating a husband for loss of a wife, therefore courts consider the loss of income to the family. It may not be difficult when she had been earning. Even otherwise a wife's contribution to the family in terms of money can always be worked out. Every housewife makes a contribution to her family. It is capable of measuring in monetary terms although the emotional aspect of it cannot be.

(*Malay Kumar Ganguly v Sukumar Mukherjee*, 2009)

In *Lata Wadhwa v State of Bihar* (2001), while awarding compensation to the family, the court attempted to estimate the value of services rendered by the housewife and fixed Rs 3500/ as monthly income. In *National Insurance Company v Deepika* (2009), it has been noted that

The role of a housewife includes managing budgets, coordinating activities, balancing accounts, helping children with education, managing help at home, nursing care etc. One formula that has been arrived at determines the value of the housewife as, Value of housewife = husband's income + wife's income + value of husband's household services, which means the wife's value will increase inversely proportionate to the extent of participation by the husband in the household duties.

Thus, the Indian courts have utilized the principle of calculating a homemaker's income in cases involving insurance compensation or in tort law cases but have not applied this to the situation of marriage or in the domestic violence situation while calculating maintenance or the rights of the parties to marriage at the time of separation or divorce, where it is required the most.

Women have no rights in matrimonial property

The civil law on domestic violence provides temporary reliefs. Either the woman could decide to go back to her marital home, or she may apply for separation or divorce. Also, the personal laws are limited in approach

and construe women's rights narrowly. For instance, according to the legal provisions, at the time of separation or dissolution of marriage, a Hindu woman can claim the assets that she acquired either before her marriage or at the time of marriage by way of gifts or inheritance as *stridhan*. Also, according to the law, in case a woman separates from her abusive husband, she is being deprived of the material assets and is alienated from the joint family. In case of the breakdown of marriage, the courts do not recognize the contributions women have made by years of slogging, doing household chores, contributing their earnings, managing households, and toiling hard to do menial errands for the sake of her family.

More so, the personal laws relating to marriage, divorce, custody, and maintenance are governed by religious norms and could not keep pace with the socioeconomic transformations. A huge lag exists between the conceptualization of entitlements of men and women and their obligation. She can claim for her maintenance or alimony but that, too, is conditional and is provided to prevent her from falling into 'destitution or vagrancy' and is available if she remains chaste (*K Vimla v Veeraswamy*). In case she files for divorce, she will be deprived of the economic security that she has enjoyed within the institution of marriage (Sen, 2009). This is because a Hindu wife becomes a part of her husband's joint family upon marriage and he is duty bound to maintain her. Upon his death, the family in which a woman marries is held responsible to support her. However, she cannot become a coparcener in the matrimonial property. The family in which she marries could provide her only with a minimum amount of security and shelter upon the death of her husband.

The inequalitarian status of women remains engrained in the Hindu family although several attempts been made to amend the law. The Hindu Women's Right to Property Act, 1937 provided for 'limited estate' to Hindu women. However, this was undone by the Hindu Succession Act, 1956. Kishwar (1994) stated that the Hindu Succession Act remained the most controversial and key part during the debate on the codification of Hindu law as no other right could be effectively claimed by women unless they enjoy their basic economic rights as daughters, wives, and mothers in the family.

Women's rights to matrimonial property at the time of divorce or separation are not recognized by the law in India even when a woman has invested years within the marriage and sacrificed her sweat, blood, labor, money, career, emotions, time, and earnings for the sake of her marital family. Under no personal laws can a woman demand equal division of matrimonial property or assets at the time of separation or divorce with the exception of Goa, which follows the Portuguese Civil Code of 1867. This law in Goa recognizes the concept of joint matrimonial property, yet a systematic study on the division of matrimonial property law upon separation or divorce is essential. Several scholars have recognized that there is an incongruity in social and legal terms that needs to be addressed by introducing

the concept of matrimonial property in which property could be equitably distributed among the spouses. Sivaramayya (1999) referred to such system as the one based on 'separation of property' model under which the 'corpus of matrimonial property' is recognized over which both spouses can make a claim. Each spouse leaves the marriage with the property to which he or she holds the title. The Indian courts in several cases have taken initiatives such as pushing the concept of registration of marriage (*Seema v Ashwini Kumar*, 2006); however, in case of matrimonial property division, much is required to be done.

Indian law and economic rights of women

To cope with the discriminatory regime, Section 27 of the HMA provides that the courts can make provisions about the property 'that may belong jointly to both the husband and the wife'. The expression 'jointly' demarcates the limit of the jurisdiction of the court to the property that has been given to the spouses at or about the time of marriage, and second, such property must be given to them directly while living out the significant portion of the property that the parties may have acquired before or after the marriage or during the period of matrimony for meeting the common needs of the family (*Anil Kumar v Jyoti*, 1987). The Madhya Pradesh High Court in *Rajendra Singh v Tulsa Bai* (1996) said that a petition under Section 27 of the HMA is maintainable if it is about the joint property of the couple and not their exclusive property. In *Surinder Kumar v Madan Gopal Singh* (1980), the court opined that the word 'belong' does not necessarily reflect title to the property in the sense of ownership and elaborated that

Properties and articles presented from any source and to any one of them which by very nature of the present, or by intention of the donor, or by agreement of spouses, has come to be jointly in use by both the husband and the wife, can well be said to belong jointly to both of them.

The courts, therefore, are vested with the power to interpret the law in a gender-sensitive manner. However, accessing the courts and getting favorable orders is a tedious process. Further, the Special Marriage Act, 1954 includes no provisions to address the settlement of property upon divorce. The Muslim law made a provision that on divorce, the wife shall receive the property given to her and an amount equal to the sum of *meher* as agreed. Yet the personal laws relating to the post-divorce property division are totally inadequate to address the needs of women and children. The concept of partnership in marriage is not legally recognized. When

it comes to the division of assets, the courts could not see the invisible labor or contribution of women that results in the accumulation of wealth jointly to benefit the family as a unit. The Maharashtra government has introduced a bill titled Matrimonial Property (Rights of Women upon Marriage) Bill-2012, which attempts to formulate the rights of women in a marriage (The Hindu Business, 2012). However, at a broader level, steps are required to be taken to recognize women's contribution in matrimonial relationships and to protect women's rights in the event of separation or divorce.

Reforming the law in India to formulate the right to matrimonial property

The Law Commission (2018) in its Consultation Paper on Reform of Family Law noted that the legislature should consider guaranteeing 'equality within communities' between men and women rather than 'equality between communities'. It further recommended to recognize the community of all self-acquired property after marriage of either spouse to be treated as a unit between the couple. While recognizing the fact of women's unpaid contribution, it recommends that

it is the women who compromise on careers in order to support the families, they also contribute in most households in India to a major share of housework which is never calculated in monetary terms. The society inadequately values the housework and further for working women, childbearing results in career break which affect their employment in a way that it does not affect their husband's career. Therefore, it is important that regardless of whether the wife financially or monetarily contributes to the family income, her contribution to a household in terms of household labour, home management, and child bearing and care should entitle her to an equal share in a marriage and thus all property for income gained after marriage should be divided equally upon divorce. This does not mean that inherited property will also be included in this division but its value can be taken into account by the court for determining maintenance and alimony.

(pp. 29–30)

However, to acknowledge the contribution of women and their right to matrimonial property, and to economically empower them, what is required is amendments in the laws relating to marriage and divorce, and more importantly, the will on the part of lawmakers and enforcers to recognize the concept of the democratic families.

How separated, abandoned, or divorced women are managing

For men, divorce makes little impact on their income or lifestyle, but for women, it implies a loss of the social and economic support. Therefore, women cling to abusive marriages no matter the extent of destruction it may cause to their life or limb (De Vaus et al., 2015). Post-separation and after divorce, women face difficult economic circumstances despite their increased work participation rates. Not only do women have fewer assets, but their access to income also declines and they are forced to sink deeper into poverty. In patriarchal societies where women are deprived of any property or assets and where women's participation in formal paid work is less, most of them find it difficult to leave an abusive marriage. Therefore, in a majority of cases, divorce proceedings are initiated by men (Palriwala and Uberoi, 2008).

In a country where women have no economic assets and lower work participation rate, staying in marriage seems the only option available for ensuring social and economic security. Ghosh (2015) notes that in a mega-metropolis like Mumbai,

being employed does not necessarily translate to having capacities to leave an abusive marriage because of the informality and poor pay of women's work in slums and the lack of alternative shelters.
(p. 194)

Frequently, single women are being forced to take underpaid and risky jobs to survive, because no financial support is being provided by the state. With the weakening of the family or local community support system, these women are left to fend for themselves (Bhandare, 2018). Most of the women, post-separation or divorce, are found to be dependent on their natal family or earning less to survive, thus forcing them to live in extreme deprivation and creating an intergenerational cycle of poverty. The legal system has failed to see the situation in which women face a loss of income.

Women's access to economic resources enhances her bargaining power

Several studies in India have shown that women's bargaining power may increase within a household in case she is employed or is in position to control assets (Bhattacharya et al., 2009). Female ownership and control to property enhances a woman's economic security, reduces her willingness to tolerate violence, and deters spousal violence (Panda and Agarwal, 2005). A systematic review of 22 studies conducted in low- and middle-income countries found that women's access to paid employment protected them

against violence in some contexts but increased the risk of violence in others (Vyas and Watts, 2009). Women in regular wage employment were less likely to be beaten than unemployed women or women in casual, poorly paid jobs (Sen P., 1999). Similarly, both property ownership and access to microfinance had mixed outcomes (Heise, 2012).

Another survey (Kelkar et al., 2015) observed that the majority of women felt that land ownership improves their mobility, enhances their ability to make decisions about their own lives, and ensures a life free of violence. Land ownership enhances the status of women in the family while their vulnerability is reduced markedly (ICRW, 2006). Agarwal (1994) has argued effectively for land rights while identifying persistent gaps between women's rights and their actual land ownership and control. Agarwal and Panda (2007) suggested that a woman's employment may make a little difference but a woman's property status of owning a house or a land may significantly reduce the risk of marital violence. It is asserted that the immovable property provides a woman economic security and deters violence. Property ownership may help women acquire confidence, reduce insecurities, and enhance their status (Panda, 2006). Thus, as per these scholars, expanding women's right to property may enhance their power to negotiate violence or to leave an abusive relationship.

However, one of the limitations of this approach is that the inheritance or receiving share of land as dowry is applicable only to propertied class or those who possess land or assets. Second, it is also dependent on the dynamics of the relationship women may have with their natal families and various other factors as the number of children in the women's natal family, assets families possess, so on and so forth. Third, arguments have to be raised about women's share in the matrimonial property. Also, for women from poor families who may not own any form of property or land, strategies or measures need to be devised in terms of social protection.

Imagining alternatives beyond law and free market

There is a need to imagine innovative solutions outside the realm of existing laws and policies besides strengthening social security provisions for the majority of the population who may not own property or any assets and are living on the margins in vulnerable conditions. The discourse on social protection in the recent decades has gained currency across many developing countries, including South Asia. From proposing simple measures to protecting workers, the definition of social protection has been expanded to reduce poverty and target the vulnerable groups based on their age, gender, migration, and other indicators. Overall, social protection is now viewed as a policy framework that aims to reduce vulnerability and enhance the capacity to manage economic risks while also enhancing human potential and promoting equality of opportunity (ICRW, 2006).

In the free-market economy where the poor are already marginalized because of the crisis prevailing in terms of the rollback of social security provisions, rising unemployment, and growing inequalities, single women and their children are further relegated to the margins because of their inability to cope in the competitive world. Therefore, it is essential to ensure comprehensive strategies to end violence against women. These may include strong measures that promote economic security and restitution of survivors. It has been proposed that

Because economic dependence and severe financial stress on abused women can so acutely impact a survivor's choice to stay or leave an abusive relationship and because economic abuse by batterers is often an aspect of the power and control over their lives, stronger legal advocacy for economic safety and restitution is important to the economic empowerment of battered women and the goal of assuring that women may live free of violence and oppression by their intimate partners. Attorneys and advocates, together with their clients, should carefully evaluate the economic costs of past abuse and future survival so that clients' needs are assessed comprehensively and articulated to the court.

(Thomas, 2004)

The state needs to focus on social and economic reforms besides legal reform to transform the situation of women facing violence in homes. Thus, besides examining the legal framework relating to the rights of women in matrimonial property, short-term solutions, such as short-stay homes, shelter homes to house abused women, creche facilities, medical services, legal aid, and other support mechanisms need to be created besides advocating for long-term solutions, such as reorienting gender roles toward equality between the sexes, promoting affirmative actions to address the asymmetry in the relationship, challenging barriers to women's rights and equality, and recognizing women's value in labor market and transmission of property and other resources. Critically scrutinizing the institution of marriage and family with a gender lens is essential.

Can women be dismissed as gold diggers?

Overall, before dismissing the women complainants as gold diggers, there is a need to examine the correlation between the money spent at the time of marriage by brides and their parents and the amount complainants receive as maintenance or in settlement. Brides and their families, by customs and traditions, are compelled to spend a huge amount of money on the wedding celebration and for arranging dowry. The bride is not compensated by the

groom for wedding expenses. There is no legal process through which the money being spent on the wedding celebrations could be recovered by the brides. Financial transactions made before and after the marriage are cleverly sanctioned by the law, while coercive dowry demands are hardly penalized and the groom's family enjoys the legal immunity.

Additionally, under no personal laws can a woman demand equal division of matrimonial property or assets. It is a clear fact that the law offers limited solutions to a woman who resists the patriarchal institution of marriage. The law provides only for the retrieval of *stridhan* under Section 406 IPC besides providing for maintenance under Section 125 CrPC or under personal laws. Studies have shown that the courts are not generous enough to order maintenance easily while husbands find various excuses to avoid paying maintenance. The PWDVA provides for civil remedies; however, again, the courts have zealously guarded this turf.

A woman is thrown out of the matrimonial house once she files a complaint, and therefore to survive, she is compelled to find an alternative. The PWDVA provides for the right of residence, yet not many are exercising that option for various reasons. Further, the courts are not interpreting the right to residence liberally. Experiences reveal that often the property, if it is in the name of her husband, is transferred in the name of her in-laws, the valuables are taken away, and any bank accounts or nominations in any financial matters are reassigned to deprive women of their rights. Therefore, if a marriage breaks down, it is the woman who pays a huge cost, economically as well as socially. The term 'gold digger' seemingly does not apply to her in the given situation. Rather, it is the groom and his family who coercively demand the dowry; enjoy the lavish feast; torture the bride for dowry; may eventually murder her or claim entitlement over her love, labor, identity, and resources; and at the time of separation or divorce, pay nothing for all she has done for the sake of the marriage.

In short, this chapter argued that despite the existence of the laws, women are continuously facing dowry abuse and domestic violence. Huge expenditures are being incurred by parents of brides to celebrate lavish weddings and for arranging dowry, yet at the time of divorce or separation, women receive nothing. The law does not recognize the concept of equal division of matrimonial property. Thus, the argument that women who file the complaints are 'gold diggers' stands negated. Trapped in the web of legal technicalities and the complexities of market norms, battered women are facing increasing vulnerabilities and the state is refusing to support them. This chapter recommends that the law relating to divorce be reworked and that the provision for the division matrimonial property and the rights of women be examined. It is also suggested that the social security and the welfare support measures need to be strengthened, and wherever required, provisions need to be made to aid women and children in distress.

THE POLITICS OF MARITAL RAPE AND LAW

It is very little to me to have a right to vote, to own a property, etc. if I may not keep my body, and its uses in my absolute right. Not one wife in a thousand can do that now.

Lucy Stone, 1855 (in Russell, 1990)

Marital rape is not considered a crime in India unless a wife is under 15 years of age or the one who is living separately, even though Section 375 IPC defines rape as sexual intercourse by a man against the will of a woman or without her consent. The concept of consent finds no place in the privacy of the home. Those who justify marital rape argue on the theory of irrevocable consent and claim that the charges of marital rape will undermine the sanctity and privacy of conjugal relationship and if given the liberty, the provision may be misused by women. However, this reasoning overlooks the fact that marital rape is a humiliating act against the dignity of women. This chapter looks at the arguments for and against marital rape and argues that it should be criminalized. It unpacks the everyday possibility as well as reality of the lives of women in light of the backlash on women's rights and looks at the debate on criminalizing marital rape from the gender perspective. It concludes that this concept needs to be examined within the larger perspective of gender justice and should be dealt accordingly.

The concept of consent in marriage

Ten-year-old Phulmoni Das got married to 30-year-old Hari Mohan Maiti. He tried to consummate the marriage, causing her vagina to rupture. She suffered hemorrhage and eventually died. The case went to trial in Calcutta Sessions court on 6 July 1890. The girl's mother testified against Hari Mohan. He was convicted for 'causing grievous hurt endangering the life and the personal safety'. As Phulmoni was of legal age and married to Maiti, he was sentenced to 12 months. The charges of rape or murder of the child bride were not invoked (*Queen Empress v Huree Mohan Mythee*, 1891).

On 9 January 1891, a bill titled 'Age of Consent' was introduced that sought to amend the Penal Code. This bill was passed on 29 March 1891 to include the provision that sex with a girl under 12 even if the person is the wife of the perpetrator be considered rape punishable to ten years of imprisonment. The discourse focused on the child marriage as a socio-legal problem rather than as an issue relating to pain and injury, or as a violation of the rights of a child or violation of the rights of a wife. Perhaps, consent within a marital tie is taken for granted.

In postcolonial India, the situation has not changed. The concept of consent within or outside the marriage is hardly recognized. This is evident in the controversial case of *Tukaram v State of Maharashtra* (1979), in which the Supreme court acquitted the two constables who in an inebriated state raped a 16-year-old tribal girl, Mathura, inside the police chowki at the Desaijanj Police Station in the Gadchiroli district in Maharashtra. The constables were acquitted because of these given reasons: 'Mathura did not raise an alarm', 'there were no visible marks or injuries on her body', 'she is of loose moral character', 'she was habituated of sex', and she may have encouraged the constables to engage in intercourse with her. This case caught much attention when an open letter on 16 September 1979 was written to the Chief Justice of India by Upendra Baxi, Vasudha Dhagamwar, Raghunath Kelkar, and Lotika Sarkar, in which the concept of consent was highlighted. After massive protests by women's organizations, the Criminal Law Amendment Act, 1983 was introduced, in which the concept of custodial rape was recognized. It also shifted the burden of proof from the victim to the accused and criminalized the sexual intercourse by a husband with his wife who is living separately. However, till today, the courts have not been interpreting the concept of consent liberally and the confusion still persists. For instance, in *Mohd Farouqi v State (Govt of NCT of Delhi)* (2017), *Vikas Garg v State of Haryana* (2017), and many other cases, the decisions reflect how the embedded patriarchy operates to deny justice to women (Nigam, 2017).

On 16 December 2012, Jyoti Singh was brutally gang-raped inside a moving bus in Delhi by six men. After a few days, she died. A nationwide protest erupted and as a result, the Justice Verma Committee (2013) was constituted. It recommended strengthening the rape law while widening the definition of rape. It suggested that marital rape be brought under the purview of rape law as it originates from the notion of the ownership of a woman. The committee recommended that

exception of marital rape to be removed and the law ought to specify that,

- a) A marital or other relationship between the perpetrator or victim is not a valid defence against the crimes of rape or sexual violation;

- b) The relationship between the accused and the complainant is not relevant to the inquiry into whether the complainant consented to the sexual activity;
- c) The fact that the accused and victim are married or in another intimate relationship may not be regarded as a mitigating factor justifying lower sentences for rape.

(Justice Verma Committee Report, 2013, p. 117)

In light of the recommendations made by the committee, the Criminal Law Amendment Act, 2013 was introduced and Section 375 IPC was amended to broaden the definition of rape. The concept of consent was elaborated to include the circumstance ‘when she is unable to communicate consent’ while consolidating the position that the lack of physical resistance does not amount to consent. Under Section 376, several specific acts of rape were added, including rape by the armed forces; rape by a relative, guardian, teacher, or person in a position of trust or authority; rape on a person incapable of giving consent; rape by a person in a position of control or dominance; rape that causes grievous harm or disfiguring or maiming or endangering the life of the person; and persistent rape committed against the same woman. Many other provisions have also been introduced. However, the amendments failed to criminalize the marital rape except in situations in which the wife is living separately or is under 15 years of age.

The Supreme Court, in the matter of *Independent Thought v Union of India* (2017), while adjudicating on the issue of sexual intercourse between a man and his wife who is below 18 years of age, held that inconsistencies arise when a husband is charged with the lesser crime while enjoying an exemption from the more serious crime of rape. In *Navtej Singh Johar v Union of India* (2018), the Supreme Court held that the application of Section 377 IPC to the consensual sex between two consenting adults of the same sex is unconstitutional. Further, in *Justice K Puttuswamy v Union of India* (2017), it is held that a woman’s autonomy, her bodily integrity, and her right to privacy are essential. These decisions are milestones to advocate for the cause of marital rape, but sadly, the crime of marital rape is not yet recognized by the state.

Despite the recommendations being made by the Justice Verma Committee, the then-Minister of Women and Child Development Maneka Gandhi in 2016 in her written response to Rajya Sabha relating to the question on criminalizing marital rape replied that

the concept of marital rape cannot be applied in Indian context due to various factors like level of education/illiteracy, poverty, myriad social customs and values religious beliefs, mindset of society to treat marriage as sacrament etc.

Even earlier, when the UN Committee on Elimination of Discrimination Against Women recommended India to criminalize marital rape, the state while referring to the 172nd report of the Law Commission of India refused to do so, citing this as an interference in the institution of marriage (Ministry of Home Affairs, 2015). In a public interest litigation (PIL) filed before the Delhi High Court, the central government, led by BJP, in its reply while arguing for decriminalization of marital rape stated that

it protects private affair of husband and wife based on traditional social structure “. . .” Although the age of consent is 18 years, the social, economic and educational development in the country is still uneven and child marriages are taking place.

(The Times of India, 2016a)

In 2019, in a conference, the former Chief Justice of India, Deepak Misra, opined that legislating marital rape will ‘create an absolute anarchy in the families and in country’ (Kadidal, 2019).

According to some Parliamentarians, marriage is a sacred institution and touching it will lead to the breakdown of marriages. They view that the country should be proud of its culture because ‘the nation has low divorce rates’. Statements have been issued against criminalizing marital rape without acknowledging the fact that most marriages survive because women silently endure violence and abuse within such relationships. The culture of ‘silence’, ‘tolerance’, ‘adjustment’, and ‘compromise’ among women is propagated to ‘save and respect the honor’, ‘pride’, and ‘values’ of the family, overlooking the fact that incest, violence, suicides, and murders are the price women pay. This logic also denies a woman her right to seek a legal redress against a criminal wrong. It ignores the fact that it is the husband’s violent act and not the wife’s subsequent attempts to seek protection through the criminal justice system that disrupts a marriage.

Most of the arguments of those who are against the criminalization of marital rape foster the outdated patriarchal assumptions (The Asian Age, 2015). Experiences show that many women remain silent in abusive relationship because of reasons such as shame and family honor. Any discussion about sex is considered a taboo, but it is ironic that the act of sexual violence is not stigmatized. The argument further ignores the fact that an abusive relationship is already at the verge of being broken; therefore a voice against brutalities in a relationship will in no way further harm the marriage but may prevent the collapse of the marital institution (Nigam, 2015a).

Blanket or implied consent within the marriage

Underlying the principle of consent in the marriage is the idea of respect for woman as a person and as a partner. It involves the freedom to say ‘yes’ or

'no' to a sexual encounter and pertains to the sexual autonomy of a woman. Coercion is humiliating and disgraceful. However, the law sees it otherwise. During the 1600s, Matthew Hale (1736), Chief Justice in England, in his famous thesis titled *Historia Placitorum Corone* wrote,

The husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract, the wife hath given herself in kind unto the husband, whom she cannot retract.

According to this principle of implied consent, the permission given by the wife at the time of marriage is considered an irrevocable blanket consent to lifelong sexual intercourse. It is blindly assumed that a woman gives up all rights to her body and to herself, once she consents to marriage. The idea behind this theory is that marriage is based on a contract and it is in these terms of contract that a wife gives her irrevocable consent to have sexual intercourse with her husband whenever he wishes (Brownmiller, 1975).

However, this idea has been criticized on several grounds. For instance, the law does not allow a person to consent to the serious bodily harm or injury inflicted by another (Glasgow, 1980). Freeman (1981) explained that it is unreasonable to conclude that a woman who consents to marriage is also consenting to the force and injury her husband may inflict on her. The state is duty bound to protect the citizens from bodily harm. Also, it is being argued that the matrimonial contract is not a valid contract at all as its provisions are unwritten. The terms of the contract are unknown to contracting parties and its penalties are unspecified (Weitzman, 1974). Marriage is a personal relationship and the contract law does not require a person to perform against her will. Hale's reasoning is, therefore, inconsistent with the matrimonial laws.

The doctrine of marital unity

This concept by William Blackstone in 1769, propounded as the law of coverture, assumes that the legal identity of a married woman is merged with her husband upon marriage. This principle is also known as the '*Unity Doctrine*', which states that when a man and a woman marry, their identities get merged and they become one person in the eyes of the law. According to this doctrine, a wife is deemed to have given consent at the time of marriage to have intercourse with her husband and this consent could not be revoked any time after the marriage. In addition, a woman cannot own property, make contracts, or take part in litigation. This doctrine implies that the rape of a woman by her husband is impossible legally as a man cannot rape himself (Wendy, 1982).

This doctrine denies independent legal identity to a married woman and fails to recognize the fact that the consent to enter into a matrimonial relationship in no case implies lifelong consent to be violated and abused sexually. Taub and Schneider (1982) argued that the contradiction lies in that society created two separate spheres for a man and a woman; accordingly, a man is a provider and therefore, he has a place in the public sphere whereas a woman is confined to the home and therefore her sphere is separate. This separate sphere theory contradicts the unity doctrine. In fact, today women are entering into all spheres of society. Also, the laws governing the intimate relationships through the provisions relating to marriage, divorce, custody disputes, restitution of conjugal rights, and so on, demarcate separate sets of obligations for husbands and wives; therefore, the unity doctrine is no longer valid in such a situation.

In addition, traditional religious doctrine has been used to deploy the argument of 'wifely duties' to sexually satisfy one's husband as well as that of the husband's superiority and his duty to protect the family's morality that legitimizes the use of coercion. This social acceptance of sex-stereotype roles has been used to maintain that marital rape is not a serious crime and invalidate the traumatic experiences of marital rape victims (Dutton, 1988). Such outdated one-sided arguments highlight only wifely duties with no obligations of the men in marriage and are invalid considering the 'partnership' or 'companionship' aspects of marriage. These misogynist opinions ignore the humane aspect of any relationship.

In India, the sacramental nature of marriage as a lifelong bond is utilized to ignore the notion of consent. This assertion of conjugality is based on the concept of diminished responsibility that assumes a woman has no agency or autonomy. Further, the social relation between a man and a woman, the period of the relationship, or the spatial location of the crime will not change the fact that the crime is barbaric and requires to be penalized, prevented, and deterred.

Differentiating between rape and marital rape: Creating a hierarchy of violence

Susan Brownmiller (1975) in her famous book titled *Against Our Will* wrote that

Man's discovery that his genitalia could serve as a weapon to generate fear must rank as one of the most important discoveries of prehistoric times along with the use of fire and the first crude stone axe. From prehistoric times to the present, I believe that rape has played a critical function. It is nothing more or less than a conscious process of intimidation by which all men keep all women in a state of fear.

Thus, rape has been used ubiquitously as a crude weapon by men to exploit, threaten, harass, and abuse women in public and private spheres since ancient times. Millet (1970) has stressed that men as a category benefit from rape because it keeps women fearful and dependent.

Moreover, rape within marriage implies much more than the forced sex or sex without consent. Marital rape is an ongoing continuous, coerced sex or a compulsive violation. It is a manipulated sex in which a perpetrator may threaten, intimidate, or blackmail the victim and often in such situations, the victim has no choice but to accept the coercive ravage. Also, it is not a one-time incident; rather, a wife is raped continuously with no possibility of escape. It is a situation in which a person who is expected to 'protect' a woman himself turns out to be a predator in the home—a place which is expected to provide safety and comfort. Yet marital rape, as a critical issue has received less attention by the state.

Further, the statistics by the NCRB point out that the sexual abuse within families include not only rape of women as wives but also as daughters, mothers, sisters, nieces, daughters-in-law, sisters-in-law, and in similar such 'prohibited' relationships'. The NCRB report for the year 2013 shows that 117 victims of incest rape (rape by blood relatives) were reported in 2012, in which 1.7 percent of parents/close family members were involved (539 out of 31,807), and in 7.3 percent of the cases (2,315 out of 31,807), relatives were involved. Lately, the NCRB report of 2019 shows that a total of 46,005 incidents took place under the Protection of Children from Sexual Offences (POCSO) Act against girl children only. The NFHS-4 (2015–16) estimated that 99 percent of cases of marital rape go unreported and that the average Indian woman is 17 times more likely to face sexual violence from her husband compared to strangers. These statistics show that homes are not safe places for many girls and women.

However, marital rape or incest is still considered to be an impermeable domain today wherein the state has refused to intervene even after recommendations have been made to legislate against it. The definition of cruelty is narrowly construed not only under Section 498A, but also the provisions under Section 375 and Section 376 of the IPC have failed to recognize marital rape as a crime. Though the PWDVA has expanded the definition of domestic violence to include sexual abuse under Section 3(ii), until now, no specific remedy is available to women abused sexually within a marriage despite an intense debate to criminalize marital rape.

Section 498A criminalizes violence within a marriage. It does not criminalize rape within a relationship. The law thus maintains dual standards. A man may be penalized if he physically abuses another woman. However, he is not punished if he rapes his own wife. The law thus sanctions the crime within the *char-diwari* while creating a hierarchy of violence, treating marital rape as a lesser crime. It, in fact, contradicts itself because rape is considered a crime when it is committed by a stranger outside the marriage,

yet when it occurs within the house by a person whom the victim trusts, it is not considered a crime. The law minimizes the gravity of offense committed within the sanctity of the home while ignoring the basic fact that rape committed within the confines of the home is equivalent to custodial rape in which the power and authority of a man come into play. Such structural controversies created and legitimized by the law reproduce the patriarchal interests.

Sexual assault by a stranger is treated as a heinous crime and society desires stringent punishment or even death penalty on the assumption that a woman is raped as another man's daughter, sister, or wife. However, when it comes to marital rape, what is suggested as a pragmatic approach is 'settlement', 'compromise', or 'adjustment' on the assumption that the 'wife' is a property of her husband, and therefore she is supposed to bear such violence silently. This approach ignores the fact that the rape whether committed inside the home or outside it has serious repercussions and therefore has to be treated accordingly. Marital rape sanctions a man right's over a woman's body, her being, and her soul, making the impunity operate in the domestic space.

The law against marital rape could not be legislated because of prejudiced, unfair, and sexist views upheld by the state that ignores the concept of consent of a woman besides overlooking a woman's autonomy and her dignity as an individual. Even Section 497 IPC, which pertains to adultery, is also based on the postulation that a wife is a property of her husband. Any man other than her husband who has sex with her is attacking another man's property and must therefore be penalized. The law fails to see women as independent citizens and ignores their oppression and marginalization within the family as well as within the larger social structure. As of now, the offense under Section 497 IPC has been held as unconstitutional and struck down by the Supreme Court in *Joseph Shine v Union of India* (2018).

Marital rape is a part of a larger continuum of violence

Marital rape has been prevalent for ages as a social problem though silence has been maintained around it. In 2000, the United Nations Population Fund in a survey found that two-thirds of married Indian women have been forced into sex by their husbands. The NFHS-3 (2005–2006) in its study of over 1.25 lakhs women in 29 states observed that 40 percent of married women in the age group of 15–49, at least once, had experienced physical, sexual, or emotional violence perpetrated by spouses. A study conducted by the ICRW (2014) revealed that one in every five Indian men surveyed admitted to forcing their wives into sex.

The qualitative analysis reveals that the sexual violation is not merely related to episodic forced or penetrative sex but that it is a larger sociocultural issue. Agnes (2015a) opined that seeing marital rape only as penetrative

sex limits the definition of sexual violence within marriage. Those working with women who face domestic abuse often came across the gory stories of women being raped every night over prolonged period even during childbirth and pregnancies. Wives are being thrashed violently because they refuse to have sex. Repeated incidences of violence include insertion of objects, harming the woman's body, physically injuring it, resulting in harmful effects such as miscarriages, still births, vaginal infections, and exposure to sexually transmitted diseases (STDs) (WHO, 2000). Forced coercive intercourse within marriages and refusal to use condoms put women at risk of unwanted and unintended pregnancies (Begum et al., 2010), HIV infection (Silverman et al., 2008), acquired immune deficiency syndrome (AIDS), and STDs (Weiss et al., 2008) and damage women's health, primarily through its restrictive effect upon their ability to practice contraception, including the use of condoms (Heise et al., 1995). Frequently, accounts of sexual abuse are accompanied by the brutal saga of continuous physical, mental, and emotional violence (Human Rights Watch, 2003). This is clubbed with intimidation and humiliation often used to control wives. Segregating marital rape from other forms of brutalities and abuses, therefore, is impossible. The tribulations comprise increased risks to unwanted, repeated pregnancies, and abortions or infertility (Jejeebhoy, 1998). Many survivors of marital rape reported physical discomfort, sexual dysfunction, emotional pain, psychological trauma, anxiety, insomnia, shock, depression, negative self-image, and suicidal thoughts even years out of the violence. Violence or the threat of violence affects women's abilities to exercise control over their own bodies, making them accede to nonconsensual sex as they are less able to negotiate family planning or condom use (Duvvury et al., 2002). In patriarchal societies, women's bargaining power in marriage is lowest with regard to decision about whether and when to have sexual intercourse or about the use of precautionary measures. Also, some men assert that the use of any form of family planning implies promiscuity on the part of women (Banwell, 1990). A woman's wish to use contraception may be viewed by a man as a signal to being unfaithful or as an effort to affront his masculinity (Heise et al., 1999). The descriptions of tortures within home are often supplemented by the evidences of broken limbs, fractured skull, battered bodies, and shattered minds. Violent strategies and coercive tactics are used to evoke compliance and obedience. Countless women are forced to survive with scars that never heal, yet vocalizing about the abuse is difficult.

Marital rape is more traumatic than rape by a stranger

Susan Brownmiller (1975) has observed that rape is related to assertion of power and that it is a conscious process used by men to intimidate women to keep them in a constant state of fear. In a marital relation, a woman is

continuously forced to live invariably under the state of threat and fear because there is no escape from it. Though there can be no distinction between a 'sacred' rape carried out within the marital relationship or a rape carried out by strangers, marital rape is much more brutal, emotionally painful, and harmful because in such cases, a woman is forced to live with the perpetrator day in and day out for a prolonged period and could not find refuge anywhere else. In fact, in one case, while denying bail to a man accused of sodomizing his pregnant wife, the Delhi High Court observed,

A victim of marital sexual abuse cannot be discriminated against only because she is the wife of the offender and has to be treated as any other rape victim.

(Outlook, 2014)

In *RIT Foundation v Union of India* (under consideration) before the Delhi High court, the court questioned a men's organization that filed an intervention application that opposes making marital rape as an offense. The court stated that rape is a rape and it can happen with the use of force or through blackmail or under financial pressure, hence it asked rhetorically why marital rape be exempted from the law (Singh, 2018). The court further held that misuse cannot be used as an argument for not criminalizing of marital rape (News18.com, 2018a). However, in another matter, the Delhi High Court has turned down a plea to declare marital rape as grounds for divorce, observing that this is the mandate for legislature and the judiciary is not entitled to pass an order on the same (India Today, 2019).

In a rape by a stranger, the enemy is outside the 'home'. However, in case of marital rape, the enemy lies within the home. In cases of marital rape, the vulnerability of a woman is not limited for a shorter period like walking alone on a lonely road at night. Rather, in marital rape, she leads a vulnerable life over a longer period. Marital rape implies continuous humiliation, indignity, and shame, and the woman has to cope with intense emotional trauma embodied by the culture of silence maintained around the situation of marital rape.

Contrary to popular belief, marital rape is much more traumatic and has long lasting emotional impact as juxtaposed to rape by a stranger in which violence may not occur as frequently and the perpetrator is not intimately known to the victim. If raped by a stranger, a woman is allowed to raise her voice and, in the process, may gain sympathy from society and community. However, if raped within marriage, no one will empathize with her as it is her 'duty to keep her family intact and happy', and by complaining against such 'trivial, non-issues' she is crossing the boundaries by tearing apart the lines drawn between 'bedroom privacy' and the public domain outside the family (Nigam, 2015a).

Debates regarding criminalization of marital rape

The Justice Verma Committee Report has ruled out the common law of coverture. The committee suggested that the existence of a relationship is not a valid defense against sexual violation. However, this recommendation was rejected by the then government, which selectively picked up a few suggestions rather than holistically adopting the same. This piecemeal fragmented application of the multi-sectoral approach denies a comprehensive recourse to the survivors of sexual assault. In fact, since independence, successive governments have decided against touching the institution of marriage. By situating an act of violence in its locational context, and by recognizing the subordinate relationship of the victim with the abuser, the gravity of the crime is bargained. By attaching an emotional value to the context of violence, the significance and relevance of abuse is devalued (Marcus, 1994). Therefore, such an act of violence is condoned or calls for lesser punishment. It allows the perpetrator to act without fear or deterrence. The legal system therefore connives with men to control women while reiterating the belief of 'rightness' of male power and 'entitlement' of men within the domestic sphere (Marcus, 1994, p. 18).

In fact, when the issue of criminalizing marital rape was discussed in Rajya Sabha, the then-Minister of State for Home Affairs Haribhai Parathibhai Chaudhary stated that marriage is a sacrosanct institution. He argued that 'the concept of marital rape, as understood internationally, is not suitable in the Indian context, due to illiteracy, poverty, social customs and values, religious beliefs and the fact that Indian society treats marriage as a sacrament' (MHA, 2015). The minister, like many others, upholds the conservative notion that exploits the social customs and religious beliefs as a shield to endorse the retrogressive ideologies. It sanctions and legitimizes sexual abuse while censuring the poor and illiterate for sexual violation and while overlooking the fact that crimes against women are the misdeeds that occur in many upper- and middle-class households too.

Even earlier, a Standing Committee on Home Affairs in 2012 (167th Report on Criminal Law Amendment Bill, 2012), on these conventional bases, dismissed the recommendation for criminalizing marital rape. The committee argued that

In India, for ages, the family system has evolved and it is moving forward. Family is able to resolve the problems and there is also a provision under the law for cruelty against women.

The orthodox view holds that women have ways of approaching the courts and it is not necessary to charge a man with the offense of rape. Report No. 172 by the Law Commission (2000) also opined that criminalizing marital rape would amount to 'excessive interference with the marital relationship'.

These noxious assumptions presume that marriage implies a lifelong blanket consent to sexual intercourse. The ingrained stereotypes guide the actions of state.

Ideological and legal incoherency

The hegemonic ideas of cultural relativism indicate that criminalizing marital rape is not feasible with the given culture. Also, the notion of not intervening in the marital institution is based on the arguments as conveyed by the *Manusmriti*. Besides, these amplify the principles laid down during the Victorian era. This logic fails to recognize the fact that marital rape is an extreme form of violence. It is a violation of the trust and sanctity in a relationship and also overlooks the fundamental principle of women's bodily integrity. This rationality fails to address the structural inequalities inherent in the system and indoctrinate the acceptability of sexual violence as 'normal'. The gender dimensions of marital violence are being overlooked as this position fails to recognize the fact that rape within marriage implies a patriarchal assertion of the male power. This principle ignores the fact that letting go of a violent person in no way alters his violent behavior. The argument of the culture is outdated as it fails to adapt itself to the changing sociocultural aspects of society.

Controversial arguments to deny women of their autonomy and bodily integrity

Two sets of arguments are proposed to deny wives their right to protection against sexual assaults within the marriage. One set holds that due to the conditions of 'poverty, illiteracy, religious beliefs and social customs', the 'Indian situations are not suitable' to adopt the marital rape laws as applicable elsewhere. The second line of thought that is in direct contradiction with the first opines that women in India are misusing the laws. These two positions are inherently contradictory. The first is based on the presumption that majority of men and women are illiterate, poor, and too ignorant to understand the intricacies of the law or the violence they face. This point directly negates the second line of thought, which assumes that women are too smart to frivolously misuse the law.

Also, the proponents of both these lines of arguments expect women to be docile, submissive, 'tolerant', 'adjusting', and passive and assume that wives in no situation should complain against their abusive husbands. This social construct that shapes the marital relationship is authoritative, inequalitarian, and autocratic. This philosophy denies married women their right to lead a life free from violence. The discourse relating to the denial of criminalizing marital rape is fragmented, conflicting, and contradictory. It creates several binaries in terms of literacy, class, and other aspects while

infantilizing women on one hand and yet lamenting that women are abusing the law. Several questions emerge as one examines these opinions. Are all Indian women financially, educationally, and economically independent and literate enough, or are they clever enough to manipulate the complex technicalities of law to take advantage of it? Are women in general guided by the religious and conventional beliefs relating to marriage that they do not speak against any kind of abuse within marriage? Are poor men insensitive to women or do the poor women lack the ability to recognize a violation of their physical rights? Are the rich or educated men more sensitive to the issue of violence? Can the levels of education, prevalence of poverty, and existence of rigid social customs or religious beliefs be reasons enough to justify nonconsensual sex? If the act of rape is destructive, then how come banning the laws against such a heinous act will break down the marriage? Are poor women incapable of recognizing their own welfare? How can a civilized society justify rape without giving victims any opportunity to raise their concerns?

The answers to these questions are embedded in the hierarchical social structure that discriminates between men and women and that sees 'women' as a homogeneous entity. The questions evolved because of the complex intersection between law, society, and culture that refuses to acknowledge women as equal citizens imbued with rights. Patriarchy operates to rule the religious, legal, political, and social institutions, including marriage. It is necessary to examine it more deeply to comprehend the nature of violence within the intimate relation of marriage. Family as a patriarchal institution often reifies the inequalities within marriage.

State's obligation to promote rights of the citizens

The role of the state in a democratic egalitarian society is to protect and promote the rights of its citizens regardless of their sex or social status. The international instruments, the national laws as well as the constitutional laws bind the state to promote the rights of women as citizens whether or not they are married. Marital rape exemptions are unconstitutional. By denying the rights of women, the state is evading its obligations to promote the rights of its citizens on flimsy grounds. A woman as a citizen is legally under no obligation to pay the price through risking her health or life to save the family. The noninterventionist approach followed by the state in issues related to marital rape perpetuates biases and discrimination against married women.

Asymmetrical power relations within marriage

Engels propounded that marriage is a man-made institution established to secure power as well as ownership of property. Russell (1929) while

elaborating on the Victorian notions of morality observed that the wife is seen as a property of man—before marriage, she belongs to her father, and after marriage she is considered as an inseparable possession of her husband. Women are seen as powerless creatures without any autonomy and as merely an object of pleasure. Marital alliances in the patriarchal societies are blindly considered a sacrament rather than a contract between two equals. It is ironic that the ‘sacramental’ nature could not protect the violation of women within marriages.

Marriage in a patriarchal society is more about the assertion of masculinity and this asymmetry is sanctioned by the law, religion, and society. The Indian legal system is guided by the Laws of England as prevalent during the eighteenth century. The Blackstone Commentaries or the Victorian ideology still inspire the ideologies determined by the courts in India. The Blackstone Commentaries highlighted that marital contract is based on the superiority of the husband and puts the wife in a subjugated position. Also, the social and cultural norms imagine a man to ‘conquer and colonize while a woman is expected to receive, surrender and accept’ (Grace, 2012).

The social construct of manhood entails exhibiting masculine, aggressive power affirming dominance. For an average Indian man, therefore, manliness is about acting tough, using his privilege, asserting himself, determining rules in relationships, and, above all, controlling women. A man who fails to affirm power in the marital relation is being ridiculed and derided of lacking manly traits. The foundations of marriage are built around man’s entitlement on his wife as a possession. The customary practices bequeath a man an unchallengeable right over a woman’s body and sanction him to use violence in case the demand is not met.

Marital rape implies betrayal of trust

The Supreme Court of Virginia in *Weishaupt v Commonwealth* (1984) stated that a marriage in which rape is involved is not worthy to be preserved.

It is hard to imagine how charging a husband with the violent crime of rape can be more disruptive of the marriage than the violent act itself. Moreover, if the marriage has already deteriorated to the point where intercourse must be commanded at the price of violence, we doubt that there is anything left to reconcile.

Attempting to protect a decaying and a violent marriage by forcing compromise at the expense of violence women face is not worth it. Marital rape is destructive because it threatens the elementary roots of a relationship in which a woman may end up feeling humiliated, perplexed, and deceived. Marital rape, therefore, involves a betrayal of this trust and leads to trauma besides a sense of disillusionment. It questions the very essence of human

relationship. In this situation, a man can no longer be trusted as a protector and a woman cannot turn to the batterer to seek comfort or gain reassurance. The home is no longer safe for a woman. Marital rape is a heinous act that invades the sanctity of the institution of marriage and affects the very core of the relationship.

Rape is a crime, and it is not related to the family honor

Historically, women are considered custodians of honor of their families, tribes, and communities. Rape is therefore treated as an attack on the community and the theft of a man's property. Marital rape is not recognized because it is assumed that a man cannot harm himself. And even today, this norm continues to dictate the common notions and practices. It denies considering marital rape as a serious crime against a woman's body or integrity and treats it as a less serious issue linked to family honor and injury to a man's property. However, this doctrine fails to recognize that rape is a violent and aggressive crime against a person; the object of law, therefore, should be to deter violence.

A woman is not a property, and marriage is not a license to rape

Unreasonable assumptions guide society that marriage is a license to rape. A woman is treated as a chattel (Mitra, 1979). Nonconsensual sex within marriage is not recognized in India. However, in several decisions, the courts have upheld the right to bodily integrity of women. For instance, the Gujarat High Court in *Nimeshbhai Bharatbhai Desai v State of Gujarat* (2018), while affirming that a husband cannot treat his wife like a chattel and violate her dignity, noted that 'it is time to jettison the notion of implied consent in marriage'. It further opined,

The exemption given to marital rape, as Justice Verma noted, 'stems from a long out-dated notion of marriage which regarded wives as no more than the property of their husbands'. Marital rape ought to be a crime and not a concept. Of course, there will be objections such as a perceived threat to the integrity of the marital union and the possibility of misuse of the penal provisions. It is not really true that the private or domestic domain has always been outside the purview of law. The law against domestic violence already covers both physical and sexual abuse as grounds for the legal system to intervene. It is difficult to argue that a complaint of marital rape will ruin a marriage, while a complaint of domestic violence against a spouse will not. It has long been time to jettison the notion

of ‘implied consent’ in marriage. The law must uphold the bodily autonomy of all women, irrespective of their marital status.

(para 130.6)

The Supreme Court in *Suchita Srivastava v Chandigarh Administration* (2009) has recognized the rights of a woman to make reproductive choices as a dimension of personal liberty guaranteed under Article 21 of the Constitution. In *Sarmishtha Chkaraborty v Union of India* (2018), the apex court held that the rights of a woman to her reproductive choices is an inseparable part of her personal liberty and she has a sacrosanct right to her bodily integrity. In *Z v State of Bihar* (2018), the SC while considering the right to privacy of a woman vis-à-vis the Medical Termination of Pregnancy Act, 1971, held,

we must note that India has ratified the Convention on All Elimination of All Forms of Discrimination Against Women (CEDAW) in 1993 and is under an obligation to ensure that the rights of a woman in her reproductive choices is protected.

Therefore, the courts have recognized the women’s right to bodily autonomy and integrity in several cases. This line of argument has been used to uphold the rights of women but not in all cases. Criminalizing marital rape is a major step toward ending violence against women as well as ending the culture of impunity.

Other laws do not address the issue of marital rape

Those who propose not to criminalize marital rape argue that under Section 3 of the PWDVA, a woman can seek civil remedies including protection orders, judicial separation, and monetary compensation. Section 498A criminalizes cruelty against married woman and Section 13 of the HMA allows a woman to seek divorce from her husband on the grounds of cruelty. The remedies provided under these laws are limited and do not penalize criminal marital rape per se. No FIR can be registered on the grounds of marital rape by the aggrieved wife. These remedies may allow women to escape a dangerous situation but does not deter a violent husband. Experiences reveal that often violent husbands file counterclaims under Section 9 of the HMA pertaining to the restitution of conjugal rights. Denial of conjugal rights in relation to marriage amounts to cruelty; a man may use such reasoning slyly to escape his criminal accountability. Also, marital rape per se is not a ground for filing divorce under the Hindu Marriage Act, 1955; Special Marriage Act, 1954; or Muslim Personal Law (Shariat) Application Act, 1937. A wife has to establish the cruelty she faces because of marital rape.

Legislating against marital rape

Currently, out of 195 countries, 52 have criminalized marital rape, including the US, the UK, Germany, France, Australia, Norway, Sweden, Italy, Greece, Colombia, Chile, Thailand, South Africa, Cambodia, Malaysia, Rwanda, Ghana, and Russia. Those that have not criminalized marital rape include countries in Asia, Africa, and the Middle East, such as India, China, Singapore, Saudi Arabia, Iran, Afghanistan, Pakistan, and other countries. Nepal has criminalized marital rape in 2002. The UN has urged all countries to end marital rape and close legal loopholes (Wulforst, 2019).

Scholars in the West have conducted research on various dimensions of marital rape. Bennice and Resick (2003), while critically examining the Western literature, observed that marital rape is an endemic problem. Marital rape victims endure enormous consequences including physical and mental trauma. Several other studies have shown that marital rape adversely affects women and children, though only one-fifth of the survivors seek medical or police help (George et al., 1992). Implicit threats of violence; fear of retaliation by abusive husbands; fear of being shamed and blamed; and the experience of being belittled by relatives, police, and others are barriers that prevent women from seeking help (Kilpatrick et al., 1988; Shields and Hanneke, 1983).

The principle of implied consent has been overruled by courts in many countries. In *R v Clarence* (1888), Hale's proposition was accepted by a majority out of 13 judges. However, it has been observed that there may be cases in which a wife may lawfully refuse sexual intercourse, and her husband may then be held guilty of the crime if he forces himself on her. The House of Lords in *R v R* (1991) upheld the conviction of the husband on the grounds of rape in the case of the wife who has already left her matrimonial home and the husband forcefully entered the premises of the house of the wife's parents where she was residing, assaulted her, and attempted to have sexual intercourse against her will.

The New Jersey Supreme Court in the matter of *State v Smith* (1981) rejected the mechanical application of contract law to marriage as illogical and stated that

this implied consent rationale, besides being offensive to our valued ideals of personal liberty is not sound where the marriage itself is not irrevocable. If a wife can exercise a legal right to separate from her husband and eventually terminate the marriage 'contract,' may she not also revoke a 'term' of that contract, namely, consent to intercourse? Just as a husband has no right to imprison his wife because of her marriage vow to him . . . he has no right to force sexual relations upon her against her will. If her refusals are a 'breach'

of the marriage 'contract', his remedy is in a matrimonial court, not in violent or forceful self-help.

It has been deduced that this principle of implied consent may apply to consensual conjugal acts and not to violent sexual assaults (*People v Liberta*, 1984). The courts elsewhere have held that marital privacy is not an absolute right. The court in USA has also declared that the state must balance its interest in protecting marital privacy against women's interest in protecting bodily integrity (*People v DeStefano*, 1983). The courts in the US and the UK have held that the concept of implied consent is unreasonable as the wife who recites marriage vows cannot consent to being raped by her husband or to the violence against her will.

Personal is political

Marital rape is not being criminalized because it happens within the privacy of the home. This argument ignores the fact that marital privacy ensured by the four walls cannot be used as a reason to perpetuate injustice and inequalities within the domestic sphere or exclude women from seeking justice. The law creates a divide using the language of dualism, polarizing between private and public to entrench the existing structure of power and domination. The women's movement has long been promoting the ideology of 'personal being political' because marital rape is not a private issue and home is not an 'impenetrable sanctuary' for a man to perpetrate violence on a woman.

Marital rape is a crime

Rape of any individual, married or unmarried, is a violation of an individual's fundamental right to dignity and bodily integrity. Legally, marital rape may be construed as a crime because it fulfills all the criteria required to establish it as an offense. It involves injury, hurt, harm, and humiliation of a woman with the intent or *mens rea* to do so. Criminalizing marital rape may deter the crime and may serve as an education tool. It will send a strong message that raping wives is unacceptable.

Yet the laws condone sexual abuse in a domestic relationship. This is because the laws are designed not to preserve dignity nor are they applied to save lives of women being abused, but to preserve the sanctity of the marital institution. Women therefore end up paying a heavy price to protect the institution of marriage. Legal discourse is embedded in the larger patriarchal discourse from which it derives basic notions and stereotypical assumptions about gender roles. These biases distort the spirit of the law in the processes of application and enforcement.

The biases in legislating and implementing the law

The Law Commission (1980) in its Report No. 84 reasoned that forced sex with a judicially separated wife is punishable, because she is no longer the 'wife' (de facto) and hence the husband has no right to forcibly enforce his conjugal rights. Such a narrow approach again reinforced the Victorian legacy rather than upholding a democratic and egalitarian concept of marriage. Further, the Law Commission (2000) in its Report No. 172 suggested that enactment of any law relating to marital rape will lead to excessive interference within marriage. This contention ignored the fact that through the provision relating to the restitution of conjugal rights, the state is intervening in a private relationship. Section 9 of the HMA allows any party to a marriage to seek the intervention of the court to direct another party to fulfill his or her marital obligations. Also, in several judgments, the courts have held that denying sex to a spouse amounts to mental cruelty (*Vidhya Vishwanathan v Kartik Balakrishnan*, 2015; *Rajeev Kumar v Vidya Devi*, 2016, among others). Hence, the courts have been intervening in, governing, and regulating intimate relationships.

Making home safe

To address the issue of violence against women in a comprehensive manner, the journey has to begin from every household. It is essential to make the home a safe place for women and children. It is necessary to view marriage as an equal partnership and to recognize the concept of consent within a marital relation. Acknowledging the fact that women have a right over their bodies is essential to promote the concept of consensual sex. Challenging the deeply ingrained stereotypes and widespread entrenched mentality and questioning the biased values may provide the solutions to the issue of discrimination and violence within marriage. The intersection of the religious belief, politics, and law needs to take an anti-violence stance. Along with an alteration in the formal rules, what is required is the debate to define sexual coercion within a marriage. In addition, it is necessary to reform the system while addressing the fundamental structural inequalities that promote the environment of oppression to facilitate women's autonomy, dignity, and integrity. While amendments to the criminal laws are a significant symbolic recognition of women's right to bodily integrity, they have to be accompanied by systemic social and political transformations, including provisions for economic and social independence for women. The slogan of 'making home safe' needs to be broadly interpreted when situated in the context of rape within an intimate relationship.

THE BACKLASH AGAINST THE BACKLASH

Eliminating myths and ending misogyny

No women will be free until all women are equal.

(MacKinnon, 2006a, p. 13)

Women are the pillars of families, communities, and economies all over the world yet are facing the brunt and wrath of the family and society. Domestic violence results in serious harms to an individual woman and adversely affects her family, community, and society. The laws against domestic violence grant protection and provide for certain rights to the survivors. However, the rights are nothing without the power to claim them (Clinton, 2020). The way the backlash operates currently is that it denies the complainants their rights.

When women interact with the legal system as citizens, they are invoking their rights as granted to them by the constitution and the laws with the hope that their situational crisis is resolved fairly. However, this does not happen easily. The complainants face hostility in navigating both the social as well as the legal terrains. The voices of women frequently remain unheard. The patriarchal norms are subjugating the complainants and robbing them of their worth by enforcing myths and misogyny. Perhaps, women are being detested for challenging the authority. Instead of using the language of rights to promote justice, the law is diverted to pit one group against another. The law, therefore, is not utilized as a tool to challenge the domination but is deployed to deepen the sex-based inequalities and to reproduce the gender hierarchies.

The backlash arises because of the fear of change. More specifically, it is manufactured by those in power and who want to retain their privileges. Through the backsliding, this privileged lobby is making a mockery of the system. Practically, the law is not charging the unlawful aggression. Countering the backlash with the backlash is therefore essential at every level. The chapter concludes that women-friendly laws need to be implemented in true spirit while overcoming the myths and misogyny. Instead of diluting the legal provisions, efforts may be focused to eradicate violence, eliminate

patriarchy, facilitate the access to justice, and pave the way for gender emancipation.

Zero tolerance for violence

Arendt (1970), in her essay *On Violence*, described that violence is different from authority, force, power, or strength and is ruled by the means-end category. She further elucidated that ‘violence harbors within itself an additional element of arbitrariness’ and unpredictability. Violence is, therefore, the flagrant manifestation of power and authority.

Violence against women is an everyday reality that is pervasive and manifested across spectrum of the society adversely affecting women and children. Worldwide, an estimated 40 to 70 percent of homicides are committed by women often in the context of an abusive relationship (WHO, 2004). Domestic violence endangers the life of the woman and her children. A study by the WHO (2017) concluded that globally, as many as 38 percent of murders of women are committed by a male intimate partner. Domestic violence is leading in the deaths of women in many countries, and more specifically in the South Asian countries, the situation is appalling.

In India, the data indicate that 20 women die across the country every day because of dowry demands not being fulfilled, or almost one bride is being burned every hour. Many are compelled to commit suicide. Those who survive have to fight fierce battles. More than 14 cases of domestic violence are registered every hour across the country. Various medicolegal and community studies and evidences point out the fact that a large number of women dying are young. They are murdered within a few years of marriage at their matrimonial homes by their husbands and in-laws. It is a matter of grave concern, yet not much is being done to prevent such deaths. Instead, the crimes against women in homes are escalating. Dowry or domestic violence remains highly underreported and increasingly underestimated. Those who survive face unprecedented challenges.

Domestic violence costs a victim not only in terms of her job, productivity, and irrevocable emotional and personal damages, but it also has an adverse impact on her health and makes her prone to chronic health conditions (Jejeebhoy et al., 2010). The costs of violence, apart from human costs, go beyond the lowered economic production and include the costs associated with the political and social instability through the intergenerational transmission of violence. This work calls for zero tolerance for violence.

To save women, families and communities eliminate violence

Domestic violence involves a breach of trust by men. Many countries worldwide have expanded policies and legislation to curb this abuse. The laws recognize that violence not merely involves physical beatings but that it is a

pattern of power and coercive control being asserted over a period beyond the discrete acts (Tuerkheimer, 2004). Follingstad et al. (2004) studied the categories of psychological abuse: Treatment as inferior, humiliation/degradation, isolation, restrictions, blackmail, verbal attack and criticism, economic deprivation, threats, destabilization of woman's perception of reality, use of male privilege or rigid gender role, control of personal behavior, jealousy, suspicion, intimidation, and failure to live up to the role expectations. Kelly and Johnson (2008) noted that the

Abusers do not necessarily use all of these tactics, but they do use a combination of the ones that they feel are most likely to work for them. Because these nonviolent control tactics may be effective without the use of violence (especially if there has been a history of violence in the past), controlling violence does not necessarily manifest itself in high levels of violence.

(p. 481)

Feminist studies worldwide have shown domestic abuse as part of the larger social order organized around male privileges and emphasized valuing women's self-respect and choices without coercion or undue persuasion. Solutions are being sought to emphasize 'egalitarianism, autonomy and self-determination' (Miccio, 2005). Social science scholars have recognized many harms of violence that need to be included with the scope of legal definition while criminalizing the abuse and expanding the remedies.

However, in many countries, even though the laws have been enacted to curb violence, problems still exist at various levels—from framing to the implementation of the law. Besides, at the societal level, various socioeconomic barriers hinder the process of justice. And India is one of those countries that has made little effort to eliminate the problem. The major barrier is the mindset that focuses on saving the institution of the family at the cost of the life of women and children while ignoring the fact that this approach is undermining the abuse and is making a severe impact on families and society in general.

Women pay the huge price of escaping domestic violence

Moreover, in a patriarchal society, a battered woman as a complainant encounters numerous problems when she engages with the legal system. First, the law is half-heartedly framed; second, it is not being implemented in its true spirit; and third, the myths and misogyny prevail when the courts end up dismissing complaints as frivolous. Women who wish to escape violence, therefore, end up paying the huge price. They are being disbelieved and left powerless. Navigating the complex socio-legal terrain is not easy for

a person with little knowledge of legal technicalities; it is also not easy during the phase when she is already being traumatized due to violence.

The complex social structures conspire to tie a woman to a man who terrorizes her. She may have face an uphill battle to convince herself and the others seriously as to what she has faced and how the violence is making an impact on her life. Also, those who escape violence face difficulties of all kinds. They face the wrath and stigma of society. In situations in which societal norms discourage women from speaking and in which women are seen as dependent on men, battered women who leave an abusive marriage risk losing their security, children, shelter, land, and social standing. For a battered woman, leaving an abusive relationship is a lonely and frustrating process that embroils her in a daunting litigation process. Meeting financial expenses becomes difficult if women are not earning. Handling children is yet another issue. With the dwindling support structures in recent years, women are not receiving sufficient support from extended families or local communities. Experience of vulnerability is extremely human and deeply uncomfortable. In such a dire situation, the role of law becomes crucial to provide justice, rehabilitation, and support to the survivors. The state is responsible for ensuring an effective law and order, and the law is meant to challenge the hegemony and ensure justice.

The role of the legal system

Citizens interact with the legal system as complainants, litigants, perpetrators, respondents, defendants, accused, witnesses, and victims. These categories place individuals in a completely different set of roles that they may play within their family, society, or the community. Within a legal domain, a citizen is treated as a person endowed with certain rights and obligations in relation to the state, as well as in relation to one another. The duty of the state is to ensure that citizens have access to accessible, affordable, efficient, and responsive justice system that upholds the rule of law.

To uphold the claims of marginalized people, the constitution of India has utilized the rich conception of the substantive equality extensively as affirmative actions in a spate of cases, such as those of *Thamsi Goundan v Kanni Ammad* (1952), *CB Muthamma v Union of India* (1979), *Mary Roy v State of Kerala* (1986), *Government of Andhra Pradesh v PB Vijay Kumar* (1995), *Vishakha v State of Rajasthan* (1997), *Apparel Export Promotion Council v AK Chopra* (1999), *Vijay Lakshmi v Punjab University* (2003), *EV Chinnaiah v State of Andhra Pradesh* (2004), and many others. All these verdicts recognize that women are at a socially disadvantageous position and interpreted the legal provisions to rectify the situation of inequality and hierarchies between men and women. Substantive equality provisions have been applied to minimize the sex inequalities where sex is distinguished from the biological sense to gender as a social construct (Jaising, 2000).

Even in the domain of the personal laws, in several cases, the laws are being interpreted broadly to uphold the rights of women. For instance, in *Vineeta Sharma v Rakesh Sharma* (2020), the Supreme Court while overruling the decision in *Prakash v Phulvati* (2016) and relying on parts of *Danamma @ Suman Surpur v Amar* (2018) held that within the Hindu families, the daughters cannot be deprived of their right to equality conferred upon them by Section 6 of the Hindu Succession Act.

Also, in domestic violence cases, recently, the courts have pronounced two significant decisions. For instance, on a complaint filed by a woman under 498A, her violent husband, an advocate, has been denied selection as a district judge by the Madhya Pradesh High Court while limiting the applicability of the exalted judicial principle ‘innocent until proven guilty’. His subsequent acquittal under the case registered under Sections 498A, 406, and 34 IPC ordered by the trial court also could not rescue him because the Supreme Court Bench held that at the time of relevant selection, the case was pending against the selected candidate (The Times of India, 2020a).

Further, in *Satish Chander Ahuja v Sneha Ahuja* (2020), the Division Bench of the Supreme Court consisting of Justice Ashok Bhushan, Justice R Subhash Reddy, and Justice MR Shah, on 15 October 2020 interpreted the right to residence under the PWDVA boldly while prioritizing the right of a daughter-in-law to stay in the house owned by her parents-in-law till the application for divorce is decided. The bench while relating to the situation of survivors of violence stated,

The domestic violence in this country is rampant and several women encounter violence in some form or the other or almost every day, however, it is least reported form of cruel behavior. A woman resigns her fate to the never-ending cycle of enduring violence and discrimination as a daughter, a sister, a wife, a mother, a partner or a single woman in her lifetime. This non-retaliation by women coupled with the absence of laws addressing women’s issues, ignorance of the existing laws enacted for women and the societal attitude makes the women vulnerable. The reasons why most cases of domestic violence are never reported is due to social stigma of the society and the attitude of the women themselves where women are expected to be subservient, not just to their male counterparts but also to their male relatives.

(para. 30)

However, it is not in all cases that the courts are upholding the rights of battered women. The legal rights, therefore, emancipate, regulate, and constrain at the same time (Romkens, 2001). Perhaps, the law does not operate in a vacuum. Frequently, the larger institutional forces work to undermine the entitlements of the right holders (Taylor, 1994). The political interests

and values of those in power may not match with those of individuals, and this mismatch results in ‘misrecognition’ or ‘misconstruction’ of rights and injustice to the complainants. The legal system often could not meet the concrete needs of the individuals while enforcing the abstract rights. Also, the legal rights are structurally constrained by the narrow construction of a stereotypical ‘victim’. The ‘*dogma of egalitarianism*’, the concept framed by Fraser (2009) in the context of justice, could not ensure equality to those who are being marginalized in the stratified society.

State is male

According to the social contract theory, the state sustains and represents masculine power as a form of dominance. A woman raising her voice challenges multiple vectors of power. State guarantees security and institutionalize protection in the exchange of the natural liberty (Pateman, 1988). Protection codes intensify vulnerabilities and create binaries such as the ‘wives and prostitutes’ or the ‘good and bad’ women. Protection legitimizes women’s exclusion from some spheres of human endeavor and confinement within the others and therefore, in itself, the focus on ‘protection of women’ is unwarranted and undesirable. Also, state’s powers are not gender neutral. The ‘protection’ of a woman, therefore, is dependent on men who use the male subjectivities or the ‘male filter’ to process her complaint. Women, therefore, are paying a heavy price for the institutionalized protection in the form of dependence and agreement to abide by the protector’s rules. Women’s voices are systematically silenced and dismissed as hysterical. The way the legal avenues work is re-traumatizing for the complainants. The patronizing legal system perpetuates the underlying message that women who complain against violence are not fulfilling their marital duties.

The half-heartedly framed law

Domestic violence and dowry abuse laws are being enacted when the women’s movement pointed out the increasing incidences of violence, yet these are framed with less rigor and are being implemented with little enthusiasm. When the movement demanded enactment of the laws, it is assumed that more laws may bring more stability or more peace. However, it did not happen. Rather, more laws have created problems as the process has strengthened the state rather than empowering women. Perhaps, the circle of hopelessness is created because of the void due to the absence of the accompanying social actions clubbed with the absence of political will to transform the patriarchal mindset that refused to make any space for change. Focus laid on excessive law could not alter the problematic social structure that is oppressive and male-dominated.

Moreover, violence is frequently viewed as a result of difficulties in marital adjustment rather than as the systemic subordination of women. Excessive emphasis by the law enforcers on the reconciliation, compromise, or settlement could not alter the power imbalance within the hierarchical marital bond. Interventions are sought in the domain outside the criminal law to exacerbate adjustment difficulties rather than using it to counterbalance the male domination. What is wrongly prioritized is the idea of saving the family rather than being concerned about the safety of women and children in a violent home. The law could not relate to violence as an abuse of power with its significant implications on the notions of citizenship and property because it could not visualize women as citizens claiming a violence-free life. In fact, the law sees women's avowal enmeshed within the patriarchal familial network, while recognizing them as wives and therefore as lesser citizens. The operation of the laws has acted to disempower the battered women. The domain of the family law further propagates the idea of formal equality while treating spouses as equals when at the social level, the inequalities are deeply ingrained within the institution of the family (Agnes, 2011a). The use of the word 'spouse' mitigates the specific sociocultural context and location of women within the institution of the family.

In crux, it may be concluded that the state has made little effort to transform the inegalitarian social order. The definition of domestic violence is narrowly interpreted to not only exclude a major offense such as marital rape but also other subtle forms of violence that occurs within the domain of family.

Second, the rhetoric surrounding the law of domestic violence focuses on the 'breakdown of family' and not on the destruction of the body, mind, and soul of the recipient of the violence. Preserving a family where violence is a norm rarely helps the individual members.

Third, the broader legal position focuses on the actual physical manifestation of violence against wives but not on the fear of violence through which compliance of patriarchal norms are sought. Perhaps, this fear of violence that women live with routinely is difficult to capture in numerical or practical terms, yet it is a major factor that plays a crucial role in creating an atmosphere of terror for women. The law could not capture these fine nuances of violence.

Fourth, the law focuses on episodic violence while undermining the larger systemic, structural dominance and oppressional context in which violence is embedded. It does not acknowledge violence as a pattern of power or as a pattern of psychological, economic, sexual, and other controlling abusive actions that have implications on women's health and mind besides physical acts of abuse.

Also, perpetrators rationalize and justify their violent behavior instead of accepting the wrong they have committed. For the batterers, controlling the sexuality and labor of women is a legitimate action sanctioned by society.

At a broader level, patriarchal ideology informs the action of the various professionals and guides the state while implementing the policies, practices, and laws.

The state somehow portrayed a strong connection between the dowry and domestic violence and in the process could not eliminate the culture of dowry demand and abuse nor could it eradicate the domestic violence.

Family ideology is being imposed while implementing the law. The state seemingly is not willing to implement the legal provisions in true spirit. The law is being implemented in a way to re-victimize the victims.

The technicalities within the system further deny women any justice. Courts often view the crime through a hierarchical lens denying the severity of the violence and its impacts.

Also, the domestic violence law remains underused by women. The law made to protect women is not providing justice to the battered women. Rather, the law is being twisted and manipulated to protect the privileges and entitlements of those who hold power within the families, communities, and society. The legal system is part of the misogynist society and is a microcosm of the patriarchal social structure that is unwilling to alter the existing power structure. The situation that exists today is that the law offers little protection to women. The legal process uses the social norms to shape the matrix of the conjugality rather than using the framework of legal rights. The laws reiterate the patriarchal norms regarding labor, care giving, and material resource sharing by partners. Patriline further denies rights to women in terms of limited guardianship of children, limited rights to inheritance of women, and limited entitlement to material and productive resources in the family.

In such an environment, the attempts made by the courts to dilute the laws appear futile, superficial, and ludicrous. The state has neither shown keenness to reform the situation nor has implemented the comprehensive measures to liberate women. No viable long-term social or economic alternatives are being offered to the battered women by the state. Little is imagined outside the patriarchal setup where a survivor could explore options beyond the limited domain of *maika* or *sasural* (Nigam, 2019a). Rather than creating the favorable socioeconomic conditions to facilitate women's emancipation by providing shelter homes, medical or psychosocial support services, or economic opportunities, the state chose to focus on the groups who vociferously argued against the law. Without substantiating their averments through fact finding, or exploring the ground realities, the state is obsessed with diluting the law. Slyly, the state has created conditions whereby the law has lost its efficacy and deterrent effect. By paying no attention to its legal obligations to redress gender inequality or women's powerlessness and by protecting violent husbands by not prosecuting them, the state is reiterating injustice.

The arguments being framed in this work have examined the crux of the logic of the state as evident from the spate of judgments by the courts that erroneously delve into the dilution of the law. This work argues that the courts are technically writing the judgments without providing the justice to the complainants. The courts neither address the actual grievances of complainants nor provide restorative or rehabilitative justice. The deterrence aspect of criminal law is hardly accomplished in situations when the compromise is being imposed on victims without guaranteeing the safety of women and children. The standard operating procedures built up around the implementation of the domestic violence law, therefore, need to be reexamined.

The law to protect battered women is also battered

The domestic violence or the dowry abuse law could have acted to dismantle hierarchy and social subordination based on gender, but these significant provisions have been battered by the men's group, manipulated by the police, twisted by the judiciary, and tweaked by law enforcement agencies. When the intimate relationship became a site for coercion, control, and abuse of women, the legal discourse is guided by misogynist views. Instead of acknowledging women as a disadvantaged group that is wronged and deserves safety, the state re-victimizes the complainants. The message given by the courts is loud and clear that a woman's broken body or scarred mind is not prioritized over a broken family. Serious violence is dubbed as a 'dispute' and brushed aside rather than being treated as a criminal act. The family ideology is guiding the state's actions where crimes against women are rising yet no actions are being taken against the batterers. Frequently, the police, courts, counselors, and other staff invoke their subjective frame of reference while filtering the women's complaints rather than the objective framework using the law or the rights-based approach. The PWDVA specifically provides for making the safety plans for the aggrieved women, but such provisions are being conveniently overlooked while implementing the law.

Enmeshing personal laws, civil remedies, and criminal law creates confusion; the line is blurred from the chaos of such tweaking of the legal process with the question of women's survival and economic deprivation. These deeply intertwined interpretations restrict the legal narrative and constrict the remedies. The law enforcers utilize the '*misogynist filter*' while adjudicating the claims of women. Further, according to the current standard operating procedures of the laws, the nonphysical violence is deemed unworthy of the response or remedy whereas the physical violence is negotiated for the women's economic necessities leaving survivors with no choice but to go back to the violent home. The narrow interpretation of the law is delegitimizing the seriousness of the issue. It neither sends a message to the abuser

that the violence is not tolerated nor does it help women regain control over their lives. Frequently, conviction remains low as most cases are being dismissed as being false or are withdrawn or compromised. Agnes (2015b) opined,

The need of the hour is to salvage Section 498A of the Indian Penal Code from the shackles of adverse propaganda and ‘misuse’ by the media, goaded on by the men’s rights groups from the urban and privileged classes, and restore it as a viable law to protect victims of all types of domestic violence.

Domestic violence matters are not about winning or losing the case

In the situation of domestic violence, the question is not about winning or losing the case; rather, it is the situation in which justice needs to be restored and women and children being victimized need to be rehabilitated and supported. In other words, domestic violence cases are about restorative and rehabilitative justice. These cases are not a men versus women issue, but these involve a much larger debate about the impact of multiple patriarchies and inequalities that are deeply entrenched within society and need to be dealt accordingly. The law needs to be interpreted within the prism of the substantive equality within marriage to democratize the families. Deterrence in cases of violence is essential to prevent abuse and end the culture of violence with impunity.

No, family is not a private affair

Frequently, the state uses unreasonable logic to invalidate women-friendly laws. Foremost is that equality is a Western hegemonic concept that is against the grain of Indian culture, without realizing the fact that while using the domestic violence law in a patriarchal society, the complainants are demanding a violence-free life and not equality per se. Also, the state holds that women are not equal to men in many Western cultures too and that women in the West are also facing issues related to violence in homes, such as rape and other forms of subordination (MacKinnon, 2006b). This idea is propagated to oppose women who refuse to accept their denigration and subjugation. It underplays the role of the global women’s movement (MacKinnon, 1987). Progressive forces who attempt to counter the fundamentalist arguments are labeled as immoral or ‘anti-national’, thereby eliminating a possibility of dialogue (Gupta, 1994). The binary of the public–private divide is invoked to validate violence and to justify the unequal status of women within families.

The argument of the public–private binary that is used to justify the non-interference of the state overlooks the fact that the state is already regulating and governing intimate relationships and invading the privacy of individuals by making the laws governing age of marriage, consent, divorce, abortion, cohabitation, and *love jihad*, and other such laws. So, there is nothing personal left to hide it under the cover of the private. It is ironic that the binary of the public–private divide is utilized only while regulating the violence and not in any other sphere in which the law intervenes.

It is also argued that the family is much more than a composite of individuals. It is ‘a haven in the heartless world’ where individuals exist selflessly for the good of the whole, and therefore, gendered division is introduced, which naturalizes the women’s role into it. According to this argument, ‘a woman’s right to be an individual is curtailed by her identification with the family, man’s relationship to the family is limited by his status as an individual’. However, this line of argument ignores the fact that until women and children are safe within the families, the family as an institution is not going to thrive. The edifice of the strong family cannot be built upon battered bodies or scarred minds. Any adjustments within a family requires the input of all the members equally. The hierarchical relationships cannot harbor the strength of the family as a unit. It is critical to have democratic families that care for every individual member. Domestic violence cannot be treated as a personal or a private issue. It affects a large number of women, occurs because of systemic subordination, and therefore, requires solutions accordingly.

The law is made to deal with patriarchal terrorism

Domestic violence entails ‘*patriarchal terrorism*’ and the purpose of the law is to curtail the unleashing of abuse inflicted on women and children under the guise of ‘discipline or control’. However, currently, the legal system is erroneously propagating the myth that the domestic violence law is unleashing ‘legal terrorism’. These hypothetical assumptions ignore the fact that the law has been formulated to ensure safety and to transform the structural, systemic, historical, and cultural roots of family violence. Theoretically, the focus of the law is to alter the hegemonic regressive culture that induces and allows such abuse. Further, the law has been molded to introduce the concept of mediation by dubbing violence as a dispute or an ‘ego tussle’, which has done more harm. A woman’s economic rights are being intermeshed to pardon men’s serious crimes. The fulcrum of power is used to further push women who are already vulnerable to compromise the matter while supporting the irrational logic of patriarchy. Romanticizing the dispute resolution using a nonlegal mode is not aiding the battered women because the power imbalance is huge, reductionist, and needs to be reformed.

The backlash is leading to the culture of violence with impunity

When a woman files a case against domestic violence, she is challenging the patriarchal authority, and this action is met with hostility from the state that is twisting and manipulating the law while using religious texts and scriptures to push her backward in a controlling environment. Attempts are being made to silence her voice. Impunity exists because it is a well-known fact that a woman is always at the receiving end. Whatever she may have gone through, she is painted as guilty and society labels her as unworthy and incapable of handling her situation. Her sense of worth, integrity, and pride are questioned. For centuries, women across the world have been continuously fighting against this obnoxious culture, yet the toxic masculinity remains deeply entrenched. The culture, privileges, and law work against women and grant impunity to the men. Moreover, the attitude of blaming the victim helps create a climate of social passivity that reduces inhibition against violence and makes it difficult for women to report it.

The policies, laws, and strategies for women empowerment could not alter the obnoxious, deeply embedded belief of the male supremacy. Instead, the system propagates the culture in which men go to the extent of using the law as a tool to suppress women by filing retaliatory litigation or the SLAPP suits. Frivolous lawsuits are filed intentionally to threaten and intimidate the complainants. Hence, the courts create a culture of silence while discouraging the complainants instead of deterring the crime. Anti-SLAPP legislation is required in general in India, and specifically, in cases of domestic violence, there is a need to ensure that the complainants are not harassed by the batterers while using the family court as a further site of violence.

‘Battered women’ versus ‘disgruntled women’

The courts while pronouncing the spate of judgments in the cases relating to domestic violence have used the phrase ‘disgruntled women’ instead of the term ‘battered women’ without clarifying as to who the ‘disgruntled women’ are and why they are approaching the courts with the so-called false complaints. The courts while using the term ‘disgruntled women’ are making a mockery of the law because the use of such phrases humiliates the complainants instead of maintaining their dignity as citizens. Also, the term ‘women’ in itself is not a homogeneous category but a layered and diverse concept. Besides, the generalization that the ‘educated and elite women’ are misusing the law again needs to be examined as to what benefits they are getting out of it. It is also important to examine if the legal system is quick and fast enough, or if it has failed to provide the access to justice to the common people. Further, pitting a wife against a mother-in-law helps abusive men evade their responsibilities.

Instead of addressing the real issue that plagues the legal system, considerable efforts are being invested in painting the complainants as ‘bad’ or ‘vindictive’ while dismissing the women’s need for security, safety, and bodily integrity. Gender-biased norms drive the institution and individual consciousness currently. Further, access to justice is problematic and various ills plague the system, such as lack of resources, infrastructure, and personnel; corruption; and subjectivities. The effectiveness of the system needs to be examined and rectified in terms of vacant posts, low budget, workload, infrastructure, diversity in terms of the number of women and persons from the marginalized category to be taken on rolls, among a range of other factors. The state needs to attend to the real problems that affect access to justice to make it fair, reasonable, and affordable.

Who wants gold and money?

In the commercialized world, huge expenses are incurred today for lavish wedding celebrations besides the costs being incurred on arranging dowry. Men and their families are demanding dowry, while the parents of the brides are incurring expenses to arrange dowry and the wedding costs despite knowing that the money is no guarantee of the safety of their daughter in her husband’s home. The state instead of regulating dowry is legitimizing the same through its various schemes. The dowry law is ineffective and could not prevent or deter the coercive dowry demands or abuse. In fact, newer forms of economic violence are being inflicted on women. Also, at the time of divorce or separation, according to the existing law, a woman is entitled to receive only her *stridhan*. None of the personal laws provide for equal division of matrimonial property, even after a woman has spent years in marriage or may have left her job to take care of the family. The wages of the emotional or physical labor of women remain invisible and unrecognized by the law. The maintenance granted by the courts is not sufficient and, more importantly, remains unpaid on one pretext or the other. In such a situation, the argument that women are ‘gold diggers’ is falsely propagated by men to escape their economic liabilities and to deny women their dues. The way the system works is that complainants hardly receive anything and end up spending scarce available resources on litigation. The law instead of ensuring restorative or compensatory justice acts to reiterate the patriarchal norms that deny justice to the complainants.

The law needs to address the situation of marital rape

Marital rape is not considered a crime in India unless a wife is under 15 years of age or the one who is living separately, despite the fact that Section 375 IPC defines rape in terms of sexual intercourse by a man against the will of a woman or without her consent. The concept of consent finds no place in

such a situation as those who justify marital rape argue on the theory of irrevocable consent while viewing the wife as the property of a man. It is claimed that charges of marital rape will undermine the sanctity and privacy of a conjugal relationship and that if given the liberty, the provision may be misused by women. However, this reasoning overlooks the fact that marital rape is a humiliating act against the dignity of women from which there is no escape. This work argues that marital rape should be criminalized. The need of the hour is to recognize the concept of consent within marriage. The slogan of 'making home safe' needs to be broadly interpreted when situating marital rape within the larger context of patriarchal violence.

Making home safe

To address the issue of violence comprehensively, the journey has to begin from every household and from every person. It is essential to make the home a safe and secure place for all its members. Therefore, the discussion around the issue of respect to women and the dignity within the home needs to be initiated. It is important to view marriage as an equal partnership. Challenging the deeply ingrained stereotypes and widespread entrenched myths may provide the solutions to the issue of discrimination and violence within the family. In addition, it is necessary to reform to the justice system while addressing the fundamental structural inequalities, and the oppressive system must be replaced with a structure that promotes women's equality, dignity, and integrity. While amendments to the laws are a significant symbolic recognition of women's right to bodily integrity, they have to be accompanied by systemic social and political transformations, including provisions for economic and social independence for women. The debate has to deal with these larger questions.

Rule of law or the rule of men

Arendt (1963) in her work *Eichmann in Jerusalem: A Report on the Banality of Evil* shows how the Kantian principles of categorical imperative are deployed to banalize evil during the trial. She wrote,

The essence of totalitarian government, and perhaps the nature of every bureaucracy, is to make functionaries and mere cogs in the administrative machinery out of men, and thus to dehumanize them.

Though Arendt has been criticized by many, the fact remains that the way the law operates by deploying technicalities reduces the culpability of the crime. Men in a position of authority ignore the realities of the lives of women that Arendt termed 'holes of oblivion'. The impact of abuse on

women is ignored when men adjudicate the complaints of violence against women, and in the process, evil is banalized. This phenomenon of trivializing women's complaints of violence is ongoing and continuous. This legality of exclusion reinforces marginalization and makes it more systematic while reiterating prejudices. The operation of law disqualifies the social realities of women's lives.

This work shows how women face the 'antagonism' as well as the 'hostile environment' that exists in the public and the private spaces. The law neither views women as equal partners to a marriage relationship nor does it offer protection to women in distress. State and society collude with the batterers to malign the complainants. Abuse is not addressed according to the principles of justice. The dichotomy of the misuse of law has diverted attention from the real issues that have been affecting the legal system. The situation is that the law against domestic violence is being co-opted by those who fear that admitting any existence of the abuse will hinder the family's integrity and stability. The unrepentant abusers are shielded, comforted, and excused while the law is practiced in a way that it does not bestow the rights of women when violence occurs. Legal regulations work selectively to grant male control over money; resources; authority; and women's labor, reproduction, and sexuality. Family ideology has failed to protect women. Therefore, what is required is a human rights framework that seeks to provide substantive equality and bolster the process that strengthens the women's agency in challenging the structural inequalities in the private sphere of families.

Misogyny exists outside and inside the courtrooms

The Merriam-Webster dictionary defines misogyny simply as hatred for women, which suggests an individual psychological state. Misogyny is the ubiquitous phenomenon that operates to harm women. But misogyny is more than an individual pathology. Discrimination is a precondition for the system of dominance. It includes an ideology that is based on male entitlements that oppress women. Misogyny is about controlling women's bodies, restricting their minds, and dominating their souls. Dworkin (1974) in her groundbreaking work titled *Woman Hating* analyzed the sexism in the context of everyday life and how the system of male dominance operates and affects women. Misogyny, therefore is, a set of the systemic power dynamics rooted in everyday patterns of dominance.

Frye (1983) has distinguished between individual acts that may be sexist but sees these actions located within the larger system or framework consisting of elaborate sets of practices of 'sex-marking' and divides the species along the line of dominators and subordinates. Dunlap (2016) has used the term 'soft misogyny' to describe the implicit bias of those who attribute substantial culpability to domestic violence victims. According to Dunlap,

these soft misogynists use subtle ways to punish that perceived culpability and involves ‘behaviors and beliefs dismissive and harmful to women that occur without the conscious knowledge of the belief holder’ (p. 778). More recently, Manne (2018) defines sexism as a form of ideology and beliefs that discriminates between men and women and that punishes ‘bad’ women. She sees misogyny as a power that subjects girls and women to ‘surveillance, scrutiny and suspicion’ and punishes those who violate the patriarchal norms (p. 61). According to Manne,

at the most general level of description, misogyny should be understood as the ‘law enforcement’ branch of a patriarchal order, which has the overall function of *policing* and *enforcing* its governing ideology.

(p. 63)

Hence, misogyny is more than hate; it is about the system of oppression or the systemic enforcement of patriarchal order.

However, in cases of domestic violence in India, the law is twisted by the sexist state and the normative description shows that a totally unique extra-legal approach is being followed while negotiating the domestic violence cases in which the legal procedure is being manipulated to evade and replace the normal legal procedure. This modification of the legal process is working against the interest of the victims. It is acting to erode women’s rights as it punishes the complainant. Misogyny is evident when the abusers are not held accountable for their crime, but it is the women who are being penalized. In the guise of counseling, a complainant is being pressurized to give up her battle for a violence-free dignified life. Therefore, I call this form of justice as the *sexist or misogynist (in)justice*, in which the courts sympathize with the abusers but show no empathy for the complainants. The subjectivity and biases act to ignore the women’s battered bodies and in the process prioritized the violent patriarchal family. The law provides a platform for a woman to raise her concerns to negotiate for her dignity, but at the same time, in its enforcement, it disqualifies a woman’s experience of abuse and applies its own arbitrary notions while reiterating the power imbalance and not the rule of law.

Misogyny operates to construe complainants as hysterical, misguided, or liars who misread the intentions of attackers. Law places the responsibility of the harm on women. The rights of victims or complainants are not prioritized. No focus is laid on crime prevention, deterrence, or punishment. Conviction rate is low in domestic and dowry violence cases because the objectivity of law or legal reasoning is lost behind the technicalities and the procedural aspects of the law. No focus is being laid on rehabilitating women. Aiming for restorative justice is not part of this process. This form of arbitrary law and procedures has been practiced for decades. Law

enforcement driven by the misogynist approach reiterates the existing hierarchical relationship. Women turn to the law hoping to seek justice and in return face another form of oppression.

Theorizing the misogynist (in)justice

The primary purpose of the law is to maintain stability and order by reinforcing universal legal norms that set the official standards for normal and acceptable behavior. Law standardizes the behavior that is prohibited, protected, permitted, or enabled. Law, therefore, is objective and not just a matter of opinion (Rhode, 1997; Smith, 2005). Violations, wrong, harm, and injustices are defined by deviation from the given set of norms and standards. According to Dworkin (1986), when judges decide a case according to the law, they do more than ascertaining the contents of the law and apply them to the facts of case. The legal reasoning is to apply the content of law in a given case to reach a decision. According to Dworkin, it is the aim of all legal interpretations to 'constructively interpret' the social practice of law (p. 52).

Immanuel Kant opined that the citizens in a just society enjoy the benefits of the rule of law, and therefore the fair play is that the loyal citizens must refrain from wrongdoing. To maintain the rule of law, the state may punish those who commit an offense. The theory of retributive justice as opposed to revenge or retaliation maintains that when an offender breaks the law, justice requires that he suffers in proportion to the offense. It focuses on the punishment for the law breakers (Minow, 1998). This philosophy focuses on *actus reus* (the act of guilt) as well as on *mens rea* (a guilty state of mind). It is being criticized for being primitive and emphasizing social harms rather than the character and culpability of offenders. Suggestions are being made by scholars to focus on the rehabilitation approach or the restorative justice in which victims are allowed to participate in the process and which directs the offenders to take responsibility for their actions.

Feminist scholars in the West have shown how the law denies the experiences and needs of women and accordingly have proposed various theories of jurisprudence. Smart (1989) argued that the law is 'deaf to the core concerns of feminism'. MacKinnon (2006b) opined that throughout the history, in almost all societies, men and women have been viewed as different and unequal in terms of status and power. Overarching binaries are being used to stereotype men and women. These sets of assumptions have guided the political and economic arrangements, educational and religious institutions, and personal and social relations, including law. Law, therefore, reinforces systemic biases that are invisible, normal, and embedded within the system and are thus difficult to identify and oppose (MacKinnon, 1989; Minow, 1991). Systemic biases are accepted and internalized by victims as well as actors within the legal system. West (2000) argued that women's injuries

are not recognized by the legal culture just as the market does not recognize the value of women's work. Accordingly, reformists have argued to alter the existing system to prevent the inequities of patriarchy from affecting it; radicals have argued to abandon the legal system either in part or whole and have pushed for transforming the theories and practices to create a new system that provides equitable justice.

In the context of domestic violence law, several scholars have suggested policy and legal reforms. For instance, Schneider (2000) argued that domestic violence should be treated as part of a systemic cultural environment that discriminates against women. Fineman (2004) proposed that the state has no reason to reinforce the privileged traditional heterosexual family norm that emphasizes sexual relations between men and women on the basis of marriage as a traditional family. Rather, the state should promote care giving relationships. Others have suggested formulating a pay scale for traditional domestic duties and have also proposed alternative models for custody suits and property settlements (Olsen, 1983; Williams, 2010).

Ferraro (1996), while analyzing domestic violence discourse in the 1970s in the US, noted that the progressive feminist rhetoric sees domestic abuse as one which is concerned with the safety of women that is altered into a law-and-order discourse concerning the criminality of domestic assault. She opined,

It is possible to oppose 'domestic violence' and at the same time oppose all other efforts to restructure relation of dominance, including women subordination.

According to her, the crime control perspective has ignored the feminists' efforts to challenge male dominance grounded on conservative 'family values'. She argued that public policy and public spending are focused on arrest and imprisonment of individual criminals, leaving little space for paying attention to 'the legal structures upholding male domination within nuclear households' or the needs of women who are leaving abusive households, such as employment, safe and affordable housings, affordable health and day care, and protection of families.

In the Indian context, women are excluded from society and this marginalization is of higher standards and entails dehumanization. Discrimination, violence, and oppression against women is a product of prolonged embedded, systemic, and structural discrimination. The Constitution guarantees equality but the way the law is operated shows that women's interests are ignored. Equality is construed narrowly while the sexism, misogyny, and structural barriers are part of the legal culture and are obstructing the achievements of gender justice. The law is being manipulated to use the '*misogynist filter*' to legitimize prejudices. The process of the '*patriarchal manipulation*' is negating the complaints of women by the law and implies

abandoning the basic ideals and principles that found the law while sanctioning the patriarchal values leading to the situation of the '*misogynist injustice*'. Victims of violence are entitled to seek safety through the law, but here the law colludes with the perpetrators to amplify the horrors. Hence, there is an urgent need to contextualize the theories of jurisprudence within the context of domestic violence while considering the perspective of the battered women. The courts need to delve on the issues of domestic violence and dowry abuse from a fresh perspective that focuses on the needs of the victims and survivors of violence. The rhetoric of 'misuse and abuse' of the law is causing much harm to not only individual women who are knocking on the doors of the court to seek justice, but it is also adversely affecting families and society in the long run. The unnecessary emphasis on the discourse on the misuse of law is tarnishing the image of the legal system as biased, corrupt, and one-sided while eroding the faith of common litigants in the justice delivery paradigm.

Countering the backlash with a backlash

'I will not allow him to beat me or my children. He is sexually abusing my daughter and should be punished', said a woman while she was appearing for a hearing before a Mahila court when her husband filed a bail application.¹ What she needed was the assistance of the court to ensure safety for herself and her daughter, but the court allowed the batterer to be released on bail.

Women are waging war within homes and communities and are engaging with the state, fighting not only for their own rights but also to protect their children. In their everyday struggles, they are re-writing 'herstory' that will multiply with each future generation who will aspire for the progressive democratic ideals while countering stereotypical myths and misogyny. Dworkin (1983) reminded that

feminism requires precisely what misogyny destroys in women: unimpeachable bravery in confronting male power. Despite the impossibility of it, there is such bravery: there are such women, millions upon millions of them.

(p. 218)

The magnitude of the cases of domestic violence being brought before the courts in India shows how millions of women are resisting the misogynist violent culture on a daily basis. These courageous women are challenging the traditional stereotypes and the patriarchal culture despite facing hindrances within their families and society. The legal system has to create a space for women to raise their concerns without any hindrances and obstacles in a fair and impartial manner. More importantly, it is essential to sensitize

those implementing the domestic violence laws to appreciate the data, facts, statistics, and research to strengthen the domestic violence law instead of deliberating on the debate regarding its misuse based on uninformed opinions. It is important to understand the concept of a human rights framework that protects and promotes liberty, dignity, respect, and safety and has been enshrined in partnership with state governments worldwide.

Moving toward the broader dimensions of gender justice

Fraser (2009) in the broader international law and gender context proposed the comprehensive trivalent dimensions of justice to conceptualize the economic, sociocultural, and political (in)justice. The economic dimensions of (in)justice are manifested in the economic discrimination and calls for reconsidering the existing maldistribution and suitable redistribution. At the sociocultural level, according to her, there is a need to promote equality and recognition for the status of women and overcome an androcentric culture that privileges masculinity. The political dimension of gender justice calls for better representation of women and their interest and to reconsider the questions pertaining to exclusion from the circles of entitlement to encompass just ‘redistribution, recognition and representation’. While adapting a similar model, I suggest that the concept of justice be applied in its broader dimensions considering the local situation of the claims of women who knock on the doors of the courts to seek a life free from violence. The idea is to reconstruct the ‘idea of impartiality’ to ensure that their claims are fairly assessed to counter the hegemonic domination of privileged men. There is a need to overcome not just the gender gap, but the power gap as well (UNDP, 2019).

The law cannot remedy the human problems using the filters of the procedural technicalities while ignoring the concept of justice. Human issues require a humane approach and not a neutral, emotionless, or technical-driven objectivity. Law needs aliveness, a purpose to transform society, expose hypocrisy, reveal inconsistencies, bring out the double standards, contest domination, challenge the status quo, and aim toward social transformation. This work suggests strengthening the rights-based justice paradigm in relation to marriage. Robust, inclusive democracies can thrive when not only the access to justice for women is easy but also when the legal system imparts justice fairly, fixes the responsibilities of the abusers, and is free from any form of myths or misogyny. Instead of fighting against 498A or other women-friendly laws, there is a need to fight against domestic violence, dowry abuse, and all other forms of violence against women and children taking place inside and outside homes to create a better world.

Ni Una Manos (Not One Women Less) is a movement initiated in Argentina and spread across several Latin American countries. It raised the slogan ‘Fire is ours’ in 2018 while protesting against the abortion laws (*Ni Una*

Manos, 2018). It calls for legal, free, and safe abortions. The movement demanded to ‘take your rosaries out of our ovaries and get the military out of our territories’. To stop violence against women in India and elsewhere, similar resistance is required in which a woman’s body and mind is required to be protected from all forms of violence, be it bride burning or coercive control or any other form of abuse. Reimagining a world where not a single woman could be targeted by patriarchal violence and reclaiming the spaces—public or private—is essential to build a violence-free and gender just society.

Note

- 1 The author witnessed this personally.

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